

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 LAWRENCE TORRES
11 April 24, 2018, and April 25, 2018
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1 April 24, 2018

2 THE COURT: All right. Ms. Armijo, does
3 the Government have its next witness or evidence?

4 MS. ARMIJO: Yes, Your Honor. The United
5 States will call Lawrence Torres.

6 THE COURT: Mr. Torres, if you'll come up
7 and stand next to the witness box on my right, your
8 left, Ms. Bevel, my courtroom deputy, will swear you
9 in.

10 LAWRENCE TORRES,
11 after having been first duly sworn under oath,
12 was questioned and testified as follows:

13 THE CLERK: Please state your name and
14 spell your last name for the record.

15 THE WITNESS: Lawrence Torres,
16 T-O-R-R-E-S.

17 THE COURT: Mr. Torres. Ms. Armijo.

18 MS. ARMIJO: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. ARMIJO:

21 Q. Mr. Torres, if you can just bring that
22 microphone a little bit to you, or get closer, so we
23 can be sure to hear you when you answer. That's
24 fine.

25 Mr. Torres, how old are you?

1 A. I am 68 years old.

2 Q. Sixty what?

3 A. Sixty-eight.

4 Q. And have you spent time incarcerated
5 within the New Mexico Corrections Department?

6 A. Yes.

7 MS. ARMIJO: And I believe I am moving in,
8 without objection, Mr. Torres' pen pack, which is
9 Exhibit 799.

10 MR. BURKE: May I see it?

11 THE COURT: Any objection from the
12 defendants? Not hearing any or seeing any
13 objection, Government's Exhibit 799 will be admitted
14 into evidence.

15 (Government's Exhibit 799 admitted.)

16 BY MS. ARMIJO:

17 Q. And, Mr. Torres, do you recall what crime
18 you initially went into the Corrections Department
19 for?

20 A. Armed robbery, 1977.

21 Q. Was that armed robbery from 1977?

22 A. Around 1977, yes.

23 Q. All right. And I'm going to show you
24 Exhibit 799. If we could go to Bates 9268.

25 All right. And is that your name on this

1 document? There is a screen -- there is a screen
2 right up here, but I usually see better off of the
3 screen, so maybe that would help you, too, the
4 screen right in front of you.

5 A. Yeah. That's a J&S.

6 Q. It's a what?

7 A. Judgment and sentence.

8 Q. Okay. And explain to the jury what a
9 judgment and sentence is, as you know it.

10 A. Because they had me doing that time off
11 and on for that charge, the time since '77.

12 Q. Okay. So is this basically your
13 conviction and your judgment from the crime that you
14 were talking about from 1977?

15 A. Yes, it is.

16 Q. Okay. And for that crime, did you receive
17 a sentence of not less than 50 years or more than
18 150 years?

19 A. Yes. With parole.

20 Q. With parole. Is that "Yes"?

21 A. Those were -- yeah.

22 Q. And so how would you describe how that
23 type of sentence has worked with you?

24 A. Well, it has really worked pretty bad
25 because, I mean, I got a lot of time on that

1 sentence for a parole violation. I got caught up in
2 a lot of situations.

3 Q. Okay. Is it -- have you been in and out
4 of Corrections on parole, and then -- I mean, let me
5 ask it this way: Are you still on parole today?

6 A. Yes, I am.

7 Q. And this crime was -- or this conviction
8 was 41 years ago?

9 A. About 40 years ago.

10 Q. Okay. And you're still on parole?

11 A. Still on parole.

12 Q. Okay. And have you been released on
13 parole before, and been violated and sent back to
14 Corrections and then released again?

15 A. I've never been -- I've been just violated
16 for parole violations.

17 Q. And that's what I mean. Have you had
18 other parole violations before, or no?

19 A. Yeah, I've had other parole violations.

20 Q. Okay. And other than this crime, did you
21 also have a conviction for -- I want to go to 9269
22 on Exhibit 799.

23 All right. And this document has your
24 name on it, as well. Can you look at the screen and
25 see?

1 A. Yeah, it does.

2 Q. Okay. And it looks like this charge is a
3 possession of a controlled substance, heroin?

4 A. Oh, this? This one?

5 Q. Yes.

6 A. This is a different one, yeah.

7 Q. Right.

8 A. Yeah. This is a different -- I thought
9 you were talking about the 1977 document. I can't
10 see real good.

11 Q. Oh, okay. Well, I was talking about the
12 1977 document before, but this is -- were you
13 convicted also at one time --

14 A. Yes, I was convicted of this crime. Yeah.

15 Q. Okay. The possession of a controlled
16 substance for heroin? Yes?

17 A. Yes.

18 Q. And is that also from March 7th of 1977?

19 A. Yes, ma'am.

20 Q. And it looks like from that one you
21 received 32 days of presentence confinement and 20
22 days of probation; is that right?

23 A. That's right.

24 Q. Okay. And then I'm going to go to the
25 next page.

1 THE COURT: Can we maybe take the next one
2 up after the break?

3 MS. ARMIJO: Certainly, Your Honor.

4 THE COURT: All right. Let's be in recess
5 for about 15 minutes.

6 All rise.

7 (The jury left the courtroom.)

8 THE COURT: All right. We'll be in recess
9 about 15 minutes.

10 (The Court stood in recess.)

11 THE COURT: All right. Let's go on the
12 record. I think we've got all the defendants back
13 in.

14 Let me make sure I understand the posture
15 of this dispute on the medical records. Has the
16 Department of Corrections been ordered to produce
17 them to either the Court or the Government? What is
18 the posture of it?

19 MR. CASTLE: No. With this particular
20 one, I think that the Court took a different posture
21 and asked us to file first a show cause order; get
22 the people's positions. I believe the Department of
23 Corrections is aware of it and may have collected
24 the records, but they haven't turned them over to
25 anyone.

1 We assumed that what would happen, if the
2 Court granted it, was that it would go to the
3 Government for any redaction, and also to any
4 counsel who were objecting. And then after that, it
5 would go us.

6 THE COURT: I've got Griego's objection
7 and I've got Javier Alonso's objections. Are there
8 any other objections?

9 MS. ARMIJO: I believe that Robert
10 Lovato's attorney --

11 MR. COOPER: Charles Fisher.

12 MS. ARMIJO: -- Charles Fisher was
13 objecting. He sent us all an email, but he did not
14 know how to file it, since he's not a party to this
15 case, to file it. So we were going to direct him to
16 Ms. Bevel.

17 THE COURT: I think I got it filed.

18 MR. CASTLE: There is also Sammy Griego.

19 THE COURT: I think I've got Griego,
20 Alonso, Javier Alonso. And Charles Fisher
21 represents who?

22 MS. ARMIJO: Robert Lovato.

23 THE COURT: And how many witnesses are we
24 talking about?

25 MS. ARMIJO: I know they made a voluminous

1 request. I don't know.

2 MR. CASTLE: I think I only care about
3 five. I don't know about the other defendants. I
4 can give that list, perhaps off the record, show it
5 to the Government.

6 THE COURT: Why don't we do this. Does
7 this work for everybody: Two that there haven't
8 been objections for, go ahead and start looking at
9 those and seeing if we can use those. And then let
10 me see if I can figure out what to do on the others.

11 MS. ARMIJO: You mean the two or the
12 three? I thought there was three.

13 THE COURT: There are three objections,
14 but the two where there hasn't been an objection, go
15 ahead and get Corrections Department to give those
16 you to, and you can make, then, the redactions on
17 it. Does that work?

18 MS. ARMIJO: We'll try and work and see.
19 Because I think Frederico Munoz was objected to.

20 MR. CASTLE: We'll figure it out, Judge.
21 We don't need to take any more court time.

22 THE COURT: I think Frederico Munoz
23 objected to the PSR, not to the medical record.

24 MS. ARMIJO: But was he contacted about
25 the medical record?

1 MR. CASTLE: Yes. Everyone was.

2 THE COURT: He was given a show cause
3 order.

4 MS. ARMIJO: Okay.

5 THE COURT: So on those two, tell
6 Corrections to give them to you, you take out the
7 information, and then go ahead and produce those.
8 And then the other three, I'll figure out what to do
9 on.

10 All rise.

11 (The jury entered the courtroom.)

12 THE COURT: All right. Everyone be
13 seated.

14 All right. Mr. Torres, I'll remind you
15 that you're still under oath.

16 All right. Ms. Armijo, if you wish to
17 continue your direct examination of Mr. Torres, you
18 may do so at this time.

19 BY MS. ARMIJO:

20 Q. Mr. Torres, I'm going to show on the
21 screen from Exhibit 799, Bates stamp 9270. And are
22 you able to see the top of this document? It looks
23 like you are straining your eyes. Are you having a
24 hard time seeing, a little bit?

25 A. I can see this one.

1 Q. Okay. And I'm going to go to -- does it
2 have your name?

3 A. Yes, it does.

4 Q. And it indicates it's from -- let's see --
5 a sentencing in 2012, February; is that correct?
6 I'm looking at this part right here. Do you see
7 that, what I circled in red?

8 A. That's correct.

9 Q. Okay. And then I'm going to go to the
10 next page. Can we zoom in on the first portion?
11 All right. Now, it appears -- did you get a
12 conviction for conspiracy to commit trafficking by
13 distribution, for heroin?

14 A. Yeah. I took out a plea agreement.

15 Q. All right. And it indicates that there
16 was a three-year sentence; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. Oh, thank you.

19 Is that the extent of your felony
20 convictions, those three crimes?

21 A. Yes, ma'am.

22 Q. Okay. Now -- and did you go into the
23 Department of Corrections, then, in approximately
24 what year, if you can recall?

25 A. On this one --

1 MR. SINDEL: Excuse me.

2 A. -- on this charge --

3 THE COURT: Hold on. Hold on, Mr. Torres.

4 MR. SINDEL: Are you talking about the
5 first time he went in or the last time?

6 MS. ARMIJO: The first time he ever went
7 into the Department of Corrections.

8 MR. SINDEL: I'm sorry.

9 A. The first time? 1977.

10 BY MS. ARMIJO:

11 Q. Okay. And have you -- if you can
12 remember, do you know how many times since 1977 you
13 have been in and out?

14 A. Well, I can't remember on violations,
15 parole violations. I can't remember how many times.

16 Q. Okay. And are you out of custody now?

17 A. I'm out of custody now.

18 Q. And how long have you been out of custody?

19 A. I've been out about, I'd say, six months,
20 somewhere around there.

21 Q. Six months or so?

22 A. Somewhere around there.

23 Q. Okay. Now, I want to go to -- I want to
24 go to the year 2001, specifically March. Do you
25 recall where you were being held in the Corrections

1 Department?

2 A. Of what year?

3 Q. 2001.

4 A. 2001, I was being housed in Las Cruces
5 Correctional Center.

6 Q. Have you heard of that sometimes referred
7 to as Southern?

8 A. Yeah, Southern.

9 Q. Okay. And do you recall what housing unit
10 you were housed in?

11 A. Yes, I do. It was Paul 1 green.

12 Q. Paul 1 green?

13 A. Paul 1 green.

14 Q. Okay. And I'm going to show you what's
15 been entered into evidence as Exhibit 123. All
16 right. Can you look at the screen there?

17 A. Yes, I can.

18 Q. Okay. Do you recognize that? And if you
19 don't, that's fine.

20 A. Seems like that to be the outside of one
21 of the cell blocks.

22 Q. Do you see where it says P1 there?

23 A. Yes.

24 Q. Do you know if that was the housing unit
25 that you were in, in early 2001?

1 A. It was in the P unit.

2 Q. A "P" on it?

3 A. Yeah.

4 Q. Okay. All right. And I'm going to -- do
5 you recall -- and I'm going to go specifically to
6 March 26th of 2001. Do you recall that day? It was
7 the day that there were two murders at Southern.

8 A. Yes, I can.

9 Q. Okay. Now, where were you housed
10 specifically on that day?

11 A. I was out on the bottom tier in the unit.
12 I believe it was 104.

13 Q. All right. I am going to show you Exhibit
14 124, which has been admitted. And do you see that
15 photograph?

16 A. Yes, I do.

17 Q. Okay. And do you see the cell that you
18 were housed in on March 26, 2001, in this
19 photograph?

20 A. I think the one where it says "exit," and
21 the arrow, right there to the right.

22 Q. Okay. I'm going to -- were you on the
23 bottom level?

24 A. On the bottom level.

25 Q. Okay. Do you remember -- because you

1 can't really see the numbers on this one, on the
2 bottom level. Do you remember what number cell you
3 were in? And I'm going to show you a different
4 picture here. Hold on a second. Can we please
5 display 170 which has been admitted.

6 All right. And you know what, I'm going
7 to try -- is there any way we can get the bottom --
8 cut off the top portion, then focus in on the
9 diagram?

10 Now, can you take a moment to look at this
11 diagram. And it appears that there are some stairs
12 here on the left. And there -- the top level, it
13 has the top level numbers. And then on the lower
14 level, it has the lower level numbers. Do you see
15 that?

16 A. I see it, but I really can't understand
17 it.

18 Q. Okay. Well, then let's move on. We can
19 move on to a different one.

20 Do you recall if you were on the bottom?

21 A. I was on the bottom level.

22 Q. Do you know Frank Castillo?

23 A. I knew Frank Castillo.

24 Q. How did you know Frank Castillo?

25 A. I knew him in the streets. I knew him

1 through his father. I knew his grandmother. And I
2 knew his son.

3 Q. Okay. Were you close in age to Frank
4 Castillo, or were you closer in age to someone in
5 his family?

6 A. I believe I was closer to someone else.
7 His dad, he was about my age.

8 Q. Okay. But you knew Frank Castillo even --
9 or at least his family, from outside of the prison?

10 A. Yeah, from outside. They lived in the
11 same district I lived in. I knew the grandma. The
12 father was the closest.

13 Q. Okay. And do you know he had a nickname?

14 A. They called him Pancho.

15 Q. And do you recall where Pancho lived? Was
16 Pancho housed with you?

17 A. He lived on the top tier, right up above,
18 the next cell to me.

19 Q. I'm sorry?

20 A. Right up above, the cell next to me. The
21 cell that was next to me, he lived right up above
22 it.

23 Q. Okay. I'm going to show you again Exhibit
24 Number 124. Do you see on the top level -- I'm
25 going to circle a cell number. I believe it's 2204.

1 Do you see how this cell has red tape on
2 it?

3 A. Yeah.

4 Q. Now, if that was Frank Castillo's cell,
5 where would your cell be in relationship?

6 A. My cell would be where it says "exit,"
7 where it said "exit," the one on the right-hand side
8 of the door.

9 Q. Okay. I'm going to circle this. Would
10 this have been your cell?

11 A. That's correct.

12 Q. And do you recall whose cell was on top of
13 you?

14 A. On top of my cell, I don't think there was
15 nobody at the time. They were going in and out to
16 court up on that cell.

17 Q. Okay. And do you remember who, if
18 anybody, was next to you?

19 A. Huero Troup, Huero Edward Troup. Huero
20 Troup was next to me.

21 Q. Okay. You said Huero Edward Troup?

22 A. Yeah. Edward Troup, yeah.

23 Q. Okay. And where was his cell, looking at
24 the picture, in relationship to where your cell was?
25 As you're looking at the picture, would it have been

1 to the right or to the left?

2 A. It would be to the right, where the post
3 is covering the cell door window.

4 Q. Okay. So I'm circling right here.

5 A. That's correct.

6 Q. Would it have been right under 2204, is
7 where I circled?

8 A. That's correct.

9 Q. And who was Huero Troup?

10 A. What's the question?

11 Q. Who was Huero Troup?

12 A. Who was he?

13 Q. Yes. Did you know him?

14 A. He was just an inmate.

15 Q. I'm sorry? An inmate?

16 A. Yeah.

17 Q. Were you or have you ever been a member of
18 the SNM?

19 A. No, I never have.

20 Q. Have you been housed with members of the
21 SNM?

22 A. I've been housed with all kinds of gangs.

23 Q. And back in 2001, in the Paul 1 green
24 unit, were there people that were SNM members?

25 A. I believe there was.

1 Q. Were there people that were not SNM
2 members?

3 A. I believe there was.

4 Q. Now, I'm going to show you in a moment --

5 MS. ARMIJO: And, Your Honor, may I
6 approach the witness?

7 THE COURT: You may.

8 Q. Are you familiar with that photograph?

9 A. Yes.

10 Q. Are you in that photograph?

11 A. Yes, I am.

12 Q. All right.

13 MS. ARMIJO: Now, Your Honor, I want to
14 have him identify people, but I don't want to move
15 for its admission until he has identified and I
16 write on it. So I can show it to him and have him
17 do it, then move for its admission. I just don't
18 want to move it into admission and not be able to
19 write on it.

20 MR. BURKE: We have no objection to the
21 admission.

22 MS. ARMIJO: Do you have any objection to
23 the admission and I'm writing on it?

24 MR. COOPER: No.

25 MR. BURKE: That would be fine.

1 THE COURT: All right. That's
2 Government's Exhibit --

3 MS. ARMIJO: I believe it's 800A.

4 THE COURT: -- 800A will be admitted into
5 evidence. And the Government can write on the
6 exhibit.

7 MS. ARMIJO: The Bates is 12624.

8 (Government's Exhibit 800A admitted.)

9 BY MS. ARMIJO:

10 Q. All right. And can we get that blown up a
11 little? It's me. I'll have to do it the hard way.

12 All right. Mr. Torres, can you see the
13 screen there?

14 A. Yes, I can.

15 Q. Where are you in this photograph?

16 A. The second one to the right on the top.

17 Q. All right.

18 A. The second one to the left on the top.

19 Q. Okay. From the left -- which number are
20 you?

21 A. The second one. I've got a baseball cap
22 on.

23 Q. Is this you, where the pen is pointing to?

24 A. Yes, I do.

25 Q. Is that you?

1 A. Yeah, that's me.

2 Q. All right. And do you know who it is that
3 is standing next to you? And if you don't recognize
4 him now, that's fine.

5 A. I can't recognize him.

6 Q. Do you recognize the person to the right
7 of you?

8 A. I can't recognize him either.

9 Q. Okay. Can you recognize -- let's go to
10 the bottom. Can you recognize this person?

11 A. No.

12 Q. Okay. What about this person here?

13 A. That one I can recognize.

14 Q. Who is that?

15 A. That's Joe Gallegos.

16 Q. Joe Gallegos. And do you know Joe
17 Gallegos?

18 A. Yes, ma'am.

19 Q. And who is the person next to Joe
20 Gallegos?

21 A. That's Angel DeLeon.

22 Q. All right. And by chance, do you know who
23 this person is here?

24 A. I truthfully can't see who it is. I can't
25 see him that good.

1 Q. You can't see that good. Okay.

2 Is there anybody else that I haven't put
3 their names on that you can see who they are, that
4 you recognize? And if not, that's fine.

5 A. I hardly see nobody there that I
6 recognize, other than the one in the bottom. He
7 goes by Lino, but that's all I know.

8 Q. Lino?

9 A. Lino, yeah.

10 Q. Okay. And which one is he? And you can
11 point to the screen.

12 A. Right there.

13 Q. Touch the screen.

14 A. Touch it?

15 Q. Touch it. There we go.

16 So this person here?

17 A. Yeah, that one.

18 Q. Okay. And you know him as -- what do you
19 know him as?

20 A. I didn't hear you.

21 Q. What do you know him as? His name?

22 A. Lino, Avelino.

23 Q. Did he have a nickname?

24 A. Lino; that was his nickname.

25 Q. Do you recall when this picture was taken?

1 A. I don't know. But they were having some
2 kind of recreation outside, like they have the
3 course we play, and dominoes, play for money and
4 stuff like that, the administration gives them. I
5 think that was like a little party that all the
6 inmates were having out in the yard. And taking
7 pictures that day. They were taking pictures, a lot
8 of them.

9 Q. And I'm going to show you -- I can never
10 read this number -- Exhibit Number 175 -- wait. No,
11 Exhibit 174. Do you recognize that person?

12 A. Yeah, it's Pancho Castillo.

13 Q. All right. Now, have you used drugs
14 throughout the years?

15 A. How do I describe what?

16 Q. No, have you used drugs throughout the
17 years?

18 A. Oh, yeah. I've done a lot of drugs back
19 in those days. I was using a lot of drugs inside
20 there, in the prison.

21 Q. Okay. And what kind of drugs were you
22 using back then?

23 A. I was using marijuana, heroin, cocaine;
24 almost any kind of drug they put.

25 Q. Okay. And when -- you say that was back

1 when you were incarcerated there at Southern?

2 A. Yeah, at Southern, in Santa Fe, and almost
3 everywhere I was incarcerated.

4 Q. So have you been incarcerated in places
5 within the Corrections Department other than
6 Southern?

7 A. Yes, I've been incarcerated other places.

8 Q. You mentioned Santa Fe --

9 A. Santa Fe, Central New Mexico, Hobbs. What
10 else? Grants.

11 Q. Now, when -- going back to March 26th of
12 2001, did you -- do you recall that morning what
13 happened?

14 A. Are you talking about the day that Pancho
15 got murdered?

16 Q. Yes.

17 A. Well, the only thing that happened was, he
18 got murdered.

19 Q. Okay. Do you remember what you did when
20 you woke up that morning?

21 A. I got up -- you know, like usually -- I
22 was going to make my coffee. I was doing some hobby
23 craft.

24 Q. Some what?

25 A. Hobby craft that I had. I was making some

1 woodwork, hobby craft, like picture frames and stuff
2 like that, no? But I had my cup ready to go for hot
3 water in the microwave oven, because they had to put
4 the steamers away. They had a microwave oven way up
5 there where the TV was, up on the tier.

6 Q. And I'm going to show you a diagram again,
7 Exhibit 170. And if we could again focus in on that
8 diagram. All right.

9 If this were your unit, do you see here
10 where it says "water" and "microwave" and "trash"
11 over here?

12 MR. BURKE: Your Honor, I am going to
13 object. The question was asked and answered. He
14 said he doesn't understand the diagram, when the
15 question was posed before.

16 THE COURT: Well, I'll let her probe just
17 a little bit more and see if he can understand this
18 diagram. If he can't, we'll move on.

19 BY MS. ARMIJO;

20 Q. And you know what, let me back up. Can
21 you back up? I'm sorry.

22 I'm going to focus in on the top part of
23 this now, of this exhibit. Do you see here on the
24 top where it says "New Mexico State Police Diagram
25 of P-1 green pod"?

1 A. Yes, I do.

2 Q. Okay. Now, is that the pod and the unit
3 that you were in on March 26th of 2001?

4 MR. BURKE: Objection; leading.

5 THE COURT: Overruled.

6 A. Yes, I was.

7 Q. Okay. Now, I'm going to focus in on the
8 bottom part again and ask you to look at it again.

9 A. You're going to --

10 Q. And do you see how there are numbers here,
11 and it says "top" or it says "evel" -- it should
12 probably say "level" -- and "lower level" over here?

13 A. Yes, ma'am.

14 Q. And do you see where it appears that there
15 is an "up to upper level" and "up from lower level"
16 over here?

17 A. Yes, ma'am.

18 Q. Do you see where there is a TV over on the
19 side?

20 A. Yes, ma'am.

21 Q. Do you recognize this now that you've had
22 a chance to look at it?

23 A. The TV area, and all that area, like is a
24 little recreation area where everybody would
25 associate more likely. And from there, you could

1 see almost everywhere in the tier, everywhere in the
2 unit. You could see almost any direction, upstairs,
3 downstairs.

4 Q. Okay. So I guess my question was: Do you
5 recognize what this is, now that you've had an
6 opportunity to look at it?

7 A. Yeah. This one? Yeah. The diagram?

8 Q. Yes.

9 A. Yeah.

10 Q. And you were just talking about from a
11 certain area you could see the whole unit?

12 A. The whole unit, yes.

13 Q. Okay. What area was that, that you were
14 referring to?

15 A. Well, there would be little blind spots,
16 but not very many, little bitty ones. But the areas
17 where all these things took place, you could see
18 directly into there.

19 Q. Okay. Now, when you got up, do you
20 recall -- you said you went to the microwave?

21 A. I went to the microwave. I went and
22 started heating my water up. And I was looking
23 upstairs, because I was looking for some heroin.

24 Q. You were wanting to get some heroin?

25 A. I was wanting to get some heroin.

1 Q. Okay. Now, would this have been -- do you
2 know approximately what time this would have been in
3 the morning?

4 A. This was about -- I'd say it was early in
5 the morning, between 5:30 and 6:30, somewhere around
6 there.

7 Q. Was it when the cell doors opened?

8 A. About 5:30 they opened, I think. You
9 know, it's been a long time. I mean, 17 years, you
10 know.

11 Q. I understand that.

12 A. But, yeah, it was around that time. And I
13 got out of my cell about that time and went and
14 tried to get -- I got the water and everything, made
15 my coffee and everything. But I was very
16 uncomfortable with everything.

17 Q. Okay. Now, so when you made your water,
18 just so that we're clear, there is a little area
19 here that says "microwave." Is that the area where
20 you would have been getting your water?

21 A. That's where I would have been getting my
22 water, yeah, right there, on that day.

23 Q. Okay.

24 A. But I'd been walking up and down all over
25 here.

1 Q. Okay. When you say walking up and down
2 over here, where would that have been?

3 A. Like right in that area where you're
4 showing me, where the TV's at and where the
5 microwave's at, where you could see everything.

6 Q. Okay. So this area here?

7 A. Because I was looking for heroin. Like I
8 told you, I was looking for --

9 Q. And when you look for heroin, what do you
10 do? Do you just stand there, or are you looking up
11 at the cells? What do you do?

12 A. I was looking up there, and I seen a lot
13 of suspicious things going on up there. And I got
14 up there. I looked, you know. And this guy comes
15 up to me, Huero Troup, and tells me, "Get out of
16 here. This doesn't concern you." And he tells me
17 to go downstairs.

18 Q. Okay. Now, I'm going to stop you for a
19 minute. You said you went upstairs. Prior to going
20 upstairs, do you recall seeing anybody -- any other
21 inmates doing something that was unusual to you?

22 A. Yeah, I seen some guys. I seen DeLeon and
23 Huero Troup dismembering what was a laundry bag.
24 They were like taking it all in pieces, and making
25 like a string or something, looked like to me, no?

1 Because when I passed by, I seen through the little
2 window, because they've got like a skinny window,
3 tall and low.

4 Q. Okay. Where -- you said Angel DeLeon and
5 who?

6 A. And Huero Troup. They were in Huero
7 Troup's room doing that, no?

8 Q. Okay. And when you say "Huero Troup's
9 room," was that the cell to your right?

10 A. That was the cell to my left.

11 Q. To your left?

12 A. My left, yeah.

13 Q. Okay. So in your cell, like if you were
14 in your cell, it's to your left?

15 A. It would be to my left, yeah.

16 Q. Okay. And where was that cell in
17 relationship to Frank Castillo's cell?

18 A. It was -- Huero Troup's cell was right up
19 above Frank Castillo's cell.

20 Q. Okay. Let me show again exhibit number --
21 just so that we're clear -- sorry. Let's go back to
22 Exhibit 124. And I believe that you indicated that
23 this one was your cell; is that correct?

24 A. That's correct. That was my cell.

25 Q. Okay. And where would you have been

1 standing, from where this picture was taken, when
2 we're talking about you making your -- heating up
3 your water in the microwave?

4 A. Okay. I would have been standing almost
5 right in front of Frank Castillo's cell, but away --
6 further away. About --

7 Q. Further back?

8 A. Yeah, about 20 feet away.

9 Q. Okay.

10 A. Maybe 15, 10. I don't have a measuring
11 tape but, you know, it would be around that area.

12 Q. Okay. And where was Huero Troup's --
13 where was his cell that you were just talking about?

14 A. Huero Troup was right underneath Pancho
15 Castillo's cell.

16 Q. Okay. And is that the one that you had
17 indicated before was --

18 MR. BURKE: Excuse me, Your Honor. Our
19 real-time isn't working. It would be good for us to
20 follow along here.

21 MR. COOPER: Your Honor, would it be okay
22 to get up and stretch?

23 (A stretch break was held.)

24 THE COURT: Got it, Mr. Burke?

25 All right. Ms. Armijo.

1 BY MS. ARMIJO:

2 Q. Sorry. I think I was over here. Now, I
3 believe you previously said that Huero Troup's cell
4 was behind this concrete down here?

5 A. Correct.

6 Q. Okay. And you were talking about seeing
7 some people in there; is that right?

8 A. Yes, ma'am.

9 Q. Okay. Tell the jury what you recall
10 seeing.

11 A. What I recall what?

12 Q. What you recall seeing.

13 A. You mean altogether?

14 Q. No, no, no. In that cell, in Huero
15 Troup's cell, right then.

16 A. When they were doing the laundry bag?

17 Q. Yes.

18 A. They were taking the laundry bag apart.

19 Q. Okay.

20 A. It appeared to be. Because it was a
21 laundry bag, and it did look like they were taking
22 it apart.

23 Q. All right.

24 A. So I got suspicious, no?

25 Q. Why were you suspicious of that?

1 A. I had figured, you know, what you guys --
2 you know, early in the morning; they never got up
3 that early. They were always sleeping, no? Till
4 about 11:00, 10:00 in the morning.

5 Q. Now, did you continue to heat up your
6 coffee down there?

7 A. Yes. I continued to heat up my coffee.
8 And I was looking around.

9 Q. Now, at some point did you try to go
10 upstairs?

11 A. I tried to go upstairs, yeah. I tried to
12 go upstairs to see if I could get some heroin or
13 something.

14 Q. And what happened when you tried to go
15 upstairs?

16 A. I see something, like Huero Troup holding
17 the door or something, holding the door. And I
18 thought -- I didn't know what was going on, so
19 then --

20 Q. And I'm going to interrupt you there.
21 Which door was Huero Troup trying to hold?

22 A. Pancho Castillo's door.

23 Q. When you say "trying to hold," was he --

24 A. It appeared to be like he was trying to.
25 And then -- and then after that, he let go of the

1 door, and he went after me, no? He told me to
2 get -- you know, "Go downstairs, it doesn't concern
3 you."

4 So I went downstairs, no? And I just
5 stayed around there. I still stayed there. And I
6 got my water ready in my cell and started heating up
7 coffee. Then I started hearing like -- like
8 pounding, like they were fighting or something, you
9 know.

10 Q. Did that cause you to look back up again?

11 A. Yeah, it caused me to look back up again.

12 Q. And what did you see?

13 A. I didn't see nothing yet. I went back
14 out, up the stairs where the microwave oven was and
15 the TV area, where I could look at. Because I
16 couldn't go upstairs because he had told me not to
17 go upstairs. And it appeared to be like he had
18 something in his pocket, which appeared to be like a
19 knife or something, no?

20 Q. And who is "he" that you're talking about?

21 A. Huero Troup, Huero Edward Troup. And
22 then, when I seen all that happening, I just looked
23 like that. And I said, "Well, I better be looking
24 out for myself," no?

25 So I went in my cell, and I just stayed

1 there, and I kept just looking out, you know, just
2 hearing -- see what I could hear. They hadn't even
3 called chow, and it had been like an hour past, an
4 hour and a half past when they finally called chow.

5 Q. Okay. Now, when you did -- before you
6 went back into your room, before that hour passed,
7 did you -- you indicated that you had seen Huero
8 Troup at Frank Castillo's door at one point?

9 A. Yeah.

10 Q. Okay. Did it appear to you as if he was
11 trying to go in or hold the door shut?

12 MR. BURKE: Objection, Your Honor.

13 A. Like he was holding the door.

14 THE COURT: What was the objection?

15 MR. BURKE: It was leading because she
16 suggested the answer.

17 A. I had already said that on the statement.

18 THE COURT: Hold on, Mr. Torres.

19 Mr. Torres. I think it is. But let's not lead.

20 BY MS. ARMIJO:

21 Q. What did it appear to you to be?

22 A. I had already said in a statement that it
23 appeared he was holding it. It did appear he was
24 holding it.

25 Q. When you say "holding," holding it how?

1 A. Holding it, like with his foot and hand
2 like that, so that guy couldn't come out because
3 they were strangling him inside the cell.

4 Q. Okay. How do you know they were
5 struggling inside the cell?

6 A. Because I could hear all the boom, boom,
7 boom. And then DeLeon told me everything. When we
8 went to shower, he was telling me everything.

9 Q. Okay. We'll get to that in a moment. One
10 step at a time.

11 So after you saw that, is that when you
12 then went back into your cell?

13 A. What's that?

14 Q. After you saw Huero Troup at the door,
15 what did you do after that?

16 A. I just went back, went back. They called
17 chow afterward.

18 Q. Okay. And did you go to chow?

19 A. Everybody went to chow.

20 Q. At that point --

21 A. Almost everybody.

22 Q. Okay. And do you recall if you went to --
23 do you recall anybody in particular that you spoke
24 to during chow?

25 A. Yeah, DeLeon. Angel DeLeon, he was

1 talking with me, and he like told what's going on up
2 there, no? What's all that noise, what's all that
3 pounding. And is there any heroin up there?

4 MR. SINDEL: Your Honor, I object to this
5 as being hearsay.

6 A. And --

7 THE COURT: Hold on.

8 MS. ARMIJO: Hold on.

9 THE COURT: I guess I'm not understanding.
10 Why don't y'all approach.

11 MR. SINDEL: Yeah.

12 (The following proceedings were held at
13 the bench.)

14 THE COURT: He hasn't said anything yet.

15 MR. SINDEL: I'm trying to anticipate it a
16 little bit, Your Honor. Here's my concern. I don't
17 think that this individual -- I don't think he can
18 be identified as a member of the SNM, so it's not a
19 statement that's being made in furtherance of the
20 SNM. He's not a member of the conspiracy. He's not
21 being brought up to date on this conspiracy. And
22 Angel DeLeon is unavailable for cross-examination or
23 confrontation.

24 THE COURT: I agree with you, but it's
25 hard for me to understand. But I'm not seeing him

1 saying anything.

2 MR. SINDEL: Not yet. This was an
3 anticipatory objection, because when you ask him, he
4 just goes on.

5 MS. ARMIJO: I do anticipate if I asked
6 him about what Angel DeLeon told him, he would make
7 some statements against interests.

8 THE COURT: Who is that?

9 MS. ARMIJO: Angel DeLeon. Statements
10 against interests.

11 THE COURT: Is this one of the ones that
12 has been identified before, so that I tried to
13 identify all -- analyze all the statements against
14 interests pretrial?

15 MR. SINDEL: I don't have the document,
16 but I do not recall it in there.

17 MS. ARMIJO: It's been identified for a
18 very long time -- I can look for it -- previously.
19 It's not a co-conspirator statement.

20 THE COURT: What's the statement he's
21 going to say?

22 MS. ARMIJO: DeLeon would say that they
23 killed him. He implicated Gallegos. And stated
24 that he had a syringe and had fixed it before the
25 murder. The syringe was thrown away afterwards.

1 DeLeon stated they used a laundry bag. And that's
2 why Gallegos had a mark on his hand.

3 He will also independently be talking
4 about what Joe Gallegos told him and about what he
5 observed on Joe Gallegos.

6 THE COURT: As far as DeLeon, I didn't
7 hear anything there that would be against Angel
8 DeLeon's interests. So I don't think any of that
9 could come in.

10 MS. ARMIJO: He stated that he
11 participated in the murder, he killed him. When he
12 said "they," he was referring to himself and others,
13 that they killed --

14 THE COURT: I don't know how we're going
15 to get this in. Maybe I need to excuse the jury and
16 hear what he's saying. But that's not the way
17 people talk about themselves. When they say "they,"
18 they're talking about other people.

19 MR. SINDEL: It's a little bit difficult
20 because he will say anything at any time, even if
21 there is an objection.

22 THE COURT: Well --

23 MR. SINDEL: We can't put the toothpaste
24 back in the tube.

25 THE COURT: I think I better excuse the

1 jury and listen to it, because when I hear the word
2 "they," that's not the way people talk about
3 themselves. So it doesn't sound to me -- if you
4 want me to excuse the jury, and let's listen to him,
5 if we can.

6 MR. SINDEL: I think if I may suggest that
7 any statement you're going to get out of him, do it
8 while the jury is gone at this point, so we don't
9 have to keep coming back up here. Is that all
10 right?

11 MS. ARMIJO: I think, just an issue, I
12 would object to them getting a free deposition
13 again. They know the statements that he's going to
14 make about Joe Gallegos. This is going back to the
15 hearings.

16 THE COURT: Let's take them one at a time.
17 This is one that's not been identified to the Court
18 as a statement against interests?

19 MR. BECK: No.

20 THE COURT: This is a new one?

21 MR. BECK: I think so.

22 THE COURT: Let me get the jury out.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: Rather than you just sitting

1 there, why don't I excuse you back to the jury room
2 for a little bit. So we'll be in recess for a few
3 minutes.

4 All rise.

5 (The jury left the courtroom.)

6 THE COURT: All right. Everyone be
7 seated.

8 Mr. Torres, you'll need to stay here. I
9 think Ms. Armijo is going to ask you some more
10 questions, and there may be some more questions
11 while you're here.

12 Ms. Armijo.

13 (Outside the presence of the jury.)

14 BY MS. ARMIJO:

15 Q. Mr. Torres, can you tell us what Angel
16 DeLeon told you in reference what happened with
17 Frank Castillo, if he told you anything?

18 A. Yeah, he told me about everything that
19 happened, more than likely, you know.

20 Q. What did he say?

21 A. He continued to talk and talk and talk
22 about that, because they kept on -- like they kept
23 us together like for, I'd say, about somewhere
24 between 10 or 15 hours, you know, all the way from
25 the time that they locked us up over there at the

1 yard; they kept us separated, locked the whole
2 prison down.

3 And they kept us out there, locked up a
4 long, long time. We didn't come back to the unit
5 till it was already getting dark when we come back.
6 It was -- there was like around this time -- it was
7 in the summer sort of.

8 Q. All right. Now, I'm focusing in on just
9 some specific things here. What did Angel DeLeon
10 tell you about what had happened that morning, if
11 anything?

12 A. He told me that -- because I told him,
13 "What happened?"

14 He started telling me that this guy had
15 told him that they wanted to get Castillo because he
16 was a rat, no?

17 And I told him, "Well, how come you went
18 and did that to Castillo?"

19 He said, "Because he was a rat."

20 So then he started telling me about how he
21 killed him and everything, no? That he got --

22 Q. And who did he say -- when you say how
23 they killed him --

24 A. He said that Joe -- that Joe Gallegos is
25 the one that put the string around his neck and

1 choked him, choked him to death, no?

2 Q. Did he say what he did, "he" being DeLeon?

3 A. He said that -- he said that he distracted
4 them from everything. And then he got his feet and
5 held his feet. And, you know, they were just
6 holding him there. And that other guy, Joe, was
7 strangling him until he killed him. And they put
8 him back in the bed and put a sheet over his head or
9 face or body or whatever.

10 Q. And did you see any marks on Angel
11 DeLeon's hands?

12 A. No. I seen a mark on Joe Gallegos' hand.

13 Q. Okay. And is that the extent of what
14 Angel DeLeon told you that day, just about what had
15 happened?

16 A. No. And he showed me the mark --
17 volunteered. I didn't ask him to show no marks.

18 Q. No, I meant Angel DeLeon. Oh, did Angel
19 DeLeon show you Joe Gallegos' marks?

20 A. No. Joe Gallegos showed me his marks on
21 his hands. I didn't ask him to show them to me.

22 Q. Okay.

23 MS. ARMIJO: All right. Your Honor, I
24 believe that's all as to that issue.

25 THE COURT: All right. Hold on just a

1 second. I want to make notes here. Let me see
2 counsel up here.

3 (The following proceedings were held at
4 the bench.)

5 THE COURT: It would seem to me the only
6 thing he said that would be against DeLeon's
7 interests was, "He said that -- he said that he
8 distracted them from everything. And then he got
9 his feet and held his feet."

10 Is that going to be consistent with the
11 other versions, that DeLeon held his feet?

12 MR. BURKE: Good point.

13 MS. ARMIJO: Yes.

14 THE COURT: Who else is going to say that?

15 MS. ARMIJO: Michael Jaramillo.

16 THE COURT: That's his version?

17 MS. ARMIJO: Yes.

18 THE COURT: And that's in the 302 that I
19 have?

20 MR. BECK: If you have Michael Jaramillo's
21 302. But yes, you do, I think.

22 MR. SINDEL: Your Honor, could I just take
23 a minute to look at that 302?

24 THE COURT: Yeah. Let me take a look at
25 it, too. We did mark it as Exhibit 9? Let me

1 find --

2 MR. BECK: I think Mr. Otero's is Exhibit
3 9. I think Mr. Jaramillo's --

4 MR. BURKE: Your Honor, may I make one
5 point? They haven't established that DeLeon is
6 unavailable; made no efforts that we know of to find
7 him. There has been no effort to extradite him, and
8 if he's in Mexico --

9 MR. SINDEL: Nor has there been any
10 evidence in front of this jury that he's
11 unavailable.

12 MR. BECK: And a lot of that evidence
13 would not be put in front of the jury, nor would it
14 be said in open court.

15 MR. BURKE: There isn't any that we know
16 of. Not in discovery, anyway.

17 THE COURT: What would you put on to
18 establish that he's unavailable?

19 MR. BECK: I don't know what we could --
20 there is a warrant. There is a warrant out for his
21 arrest. And, I mean, if there has to be --

22 THE COURT: Here's that.

23 MR. BECK: I guess even to say what
24 evidence we would put on, I'd feel more comfortable
25 doing it ex parte.

1 MS. ARMIJO: Your Honor, there are a lot
2 of ongoing efforts. But we would feel that doing it
3 ex parte, because it does involve ex parte matters
4 as to Mr. DeLeon.

5 MR. SINDEL: Means and methods.

6 MR. BECK: Thank you. He's done this
7 before.

8 MR. SINDEL: I've been chased across the
9 border before.

10 MR. BLACKBURN: Are you under oath?

11 MR. SINDEL: Never.

12 THE COURT: Well, do the defendants have
13 any problem with me hearing what the Government has
14 to say about his unavailability ex parte?

15 MR. SINDEL: Your Honor, I hate to suggest
16 this, but since this may take a little bit of time,
17 might the Court just excuse the jury, let them go
18 home? It's only 15 minutes more.

19 THE COURT: Not yet.

20 MR. SINDEL: Okay. Do you have any
21 problem with me listening to their evidence, show
22 why he's unavailable? How should we do that?
23 Should we leave the courtroom?

24 MS. ARMIJO: No, I think with the white
25 noise, we could bring Special Agent Acee up.

1 MR. BECK: The problem is, we've got
2 real-time going, so we'd have to shut down
3 real-time. We'd have to do like we did with your ex
4 parte.

5 THE COURT: How long is it going to take
6 you to make your presentation?

7 MR. BECK: Probably five minutes.

8 THE COURT: Do you have any other area to
9 go to beside this one question with this witness?

10 MS. ARMIJO: No, I can go on, Your Honor.

11 THE COURT: Why don't you go ten more
12 minutes with this witness, and then we'll shut down
13 at 5:25, and I'll hear your presentation. And that
14 way, we can take the system down so that it's --
15 Ms. Bean has to create a separate file for this.

16 Does that work for everybody?

17 MS. ARMIJO: Okay.

18 THE COURT: Does that work for everybody?

19 MS. ARMIJO: It does.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: While she's lining up the
23 jury, let me ask a couple of questions on these
24 sealed or these medical records. So I've gotten a
25 memo from Mr. Castle. So I'm looking at order 2075,

1 and that is the one that had the 13 total witnesses.
2 Do we know that the Corrections Department received
3 this order?

4 MS. ARMIJO: Yes -- well, I'm assuming so,
5 because we have received some records.

6 THE COURT: Okay. And do we know that all
7 the witnesses got this order?

8 MR. CASTLE: Yes. There was -- we either
9 did it to their lawyers; or people that were
10 unrepresented, we sent it to their last known
11 address.

12 THE COURT: Okay.

13 MS. ARMIJO: Except I know that the
14 Rascons -- did you serve the Rascons or their
15 attorney? They have an attorney now. And I don't
16 know if they're on that list.

17 THE COURT: They are.

18 MR. CASTLE: They are. When we had that,
19 we did not know that the Rascons had got an
20 attorney. We sent it to the last known address.

21 THE COURT: All right. I may ask some
22 more questions. All right.

23 All rise.

24 (The jury entered the courtroom.)

25 THE COURT: All right. Everyone be

1 seated.

2 All right. Mr. Torres, I'll remind you
3 that you're still under oath.

4 All right. Ms. Armijo, if you wish to
5 continue your direct examination, you may do so at
6 this time.

7 MS. ARMIJO: Thank you.

8 BY MS. ARMIJO:

9 Q. Now, Mr. Lawrence (sic), prior to going to
10 chow, did you have an opportunity to go by Frank
11 Castillo's cell?

12 A. After -- after the fact, yeah, because I
13 believed him that they had wrapped him up in a --

14 Q. Okay. Well, I don't want to get to
15 anything that was said at chow.

16 A. Yeah.

17 Q. But at some point after breakfast, did you
18 go up to the top level and look inside Frank
19 Castillo's cell?

20 A. No, after -- no. After we ate breakfast,
21 I just came back and was waiting to go back to work
22 hall. Everybody wanted to go back to work hall.

23 Q. At some point did you go up to -- without
24 being specific, I guess, can you tell us if you went
25 up there at all?

1 A. No, not up there. I was just up -- down
2 in the bottom, right in the bottom where the TV is
3 at. And I was in my cell. I was working on my -- I
4 had a heart. I was working on woodwork, making it
5 out of wood.

6 Q. And did you ever, from down where you
7 were, did you ever have an opportunity to look into
8 his cell? Could you see inside his cell at all?

9 MR. BURKE: Objection.

10 MR. SINDEL: Leading.

11 A. From where? From downstairs?

12 THE COURT: Overruled.

13 Q. From downstairs.

14 A. No, from downstairs, I had to go upstairs.

15 Q. Okay. Now, at some point are you aware of
16 whether or not police responded, and if people were
17 there investigating Frank Castillo?

18 A. You mean after? After?

19 Q. Yes.

20 A. After, when we were at work hall, yeah.

21 Q. Okay.

22 A. We were already out in the yard, no?

23 Q. Okay. You said you were at work?

24 A. Yeah, everybody was at work, the guys that
25 work, the outside crew in the yard. And he was one

1 of them. Joe worked out there, and Frank and DeLeon
2 worked out there. And I don't remember who else
3 worked out there. But one thing that I remember,
4 they were trying to keep us in units. They kept us
5 out there for a long, long, long, long time.

6 Q. Okay.

7 A. In the chapel.

8 Q. In the chapel?

9 A. Yeah. They kept us in the chapel for a
10 long time.

11 Q. Now, at some point prior to going out to
12 the yard, did you ever have a conversation that
13 morning with Joe Gallegos?

14 A. That morning? No, not that morning. I
15 didn't have till, like I said, till we went to the
16 yard. That's the only time I had a conversation
17 with him, out there in the yard. And then when we
18 went to eat, because they finally let us go to eat
19 about 2:00 or 3:00 in the afternoon.

20 Q. Okay.

21 A. They took the handcuffs off, and we went
22 to the chow hall. We ate there. That's where he
23 showed me a cut on his hand, no?

24 Q. Okay. Who showed you that he had a cut on
25 his hand?

1 A. Joe Gallegos.

2 Q. And describe the cut on his hand. Where
3 was it?

4 A. It was right here on his hand. I don't
5 know which hand.

6 Q. Okay. You're picking up your hand, and
7 you're showing the jury. But just so that we're
8 sure that the record gets it, you picked up your
9 hand and you motioned on the inside of your palm; is
10 that correct?

11 A. More or less, yeah.

12 Q. Okay. And what did he -- when he showed
13 it to you, did he say anything to you? Or what was
14 his demeanor?

15 A. Did he what?

16 Q. Did he say anything to you?

17 A. No, he didn't say nothing. He just went
18 like that (gesturing).

19 Q. What was his demeanor like? Do you
20 remember?

21 A. Arrogant, like usual.

22 Q. Okay. And when he showed you his hand,
23 was there anybody else around you, with you and him?

24 A. There was DeLeon; he was there at the
25 table.

1 Q. Okay. Now -- and were you -- when he
2 showed you his hand, without saying what anybody
3 said, but were you having a conversation with Joe
4 Gallegos and Angel DeLeon before Joe Gallegos showed
5 you his hand? Were you guys talking?

6 A. No.

7 Q. Okay. Now, you mentioned they kept you in
8 the chapel for some time; is that correct?

9 A. That's correct.

10 Q. And then at some point later, did you ever
11 hear Huero Troup say anything about the incident?

12 A. No, not then, because he wasn't at the
13 chapel with us. He was in his cell block.

14 Q. Okay.

15 A. They only had certain people in the
16 chapel. They had just a few. And then they had
17 some in the cell block, already locked up in their
18 cells.

19 Q. Okay. I'm talking about later on, after
20 that day.

21 A. Oh, yeah, a lot of days passed by. You
22 know, almost a month passed by.

23 Q. Okay.

24 A. More than that, I believe, you know.
25 Yeah, he would always laugh and, you know --

1 Q. Okay. What do you recall, if anything,
2 Huero Troup saying about the incident?

3 A. Just saying, "Hey, they're trying to say
4 that I killed Pancho." And the STIU unit and STG,
5 and I don't know how many else. They'd go to the
6 doors and yell, you know.

7 Q. You said a couple of things. He would go
8 to the door and yell?

9 A. Yeah.

10 Q. All right. And do you recall if -- you
11 said that he said, "They're saying I killed him?"

12 A. Yeah, "I killed Pancho Castillo."

13 Q. Did he ever say that he killed Pancho?

14 MR. BURKE: Objection; leading.

15 A. No, he never said that.

16 MR. BURKE: Objection; leading.

17 THE COURT: Overruled.

18 A. He never said.

19 Q. I'm sorry?

20 A. He never said.

21 Q. Now, do you know somebody by the name --
22 you said you knew Joe Gallegos?

23 A. Yeah, I know Joe Gallegos.

24 Q. Do you know whether or not he was a member
25 of the SNM?

1 A. I believe he was.

2 Q. Did you know if he had a brother?

3 A. Yeah, I do know his brother.

4 Q. And what brother do you know?

5 A. I know Frankie Gallegos, the other one
6 that's locked up.

7 Q. Frankie Gallegos?

8 A. Yeah.

9 Q. And do you know whether or not Frankie
10 Gallegos was a member of the SNM?

11 MR. SINDEL: I'll object to the relevance.

12 THE COURT: Overruled.

13 A. He probably was.

14 MR. SINDEL: I'll object to "probably."

15 THE COURT: Well, I'll strike that if he
16 can't be more definitive than that. I'll strike the
17 answer, and the jury will ignore it.

18 BY MS. ARMIJO:

19 Q. Okay. Do you know anything back then --
20 and I'm talking about the time of 2001 -- were you
21 involved in drug usage?

22 A. Yeah. I was in drugs, yeah.

23 Q. And do you recall who else that you know
24 of was involved in drug trafficking in -- at
25 Southern?

1 A. Almost everyone. Frankie, Joe --

2 Q. When you say "Frankie" and "Joe," who are
3 you referring to?

4 A. -- and DeLeon.

5 Q. Okay. Well, I'm going to go back. You
6 said "Frankie" and "Joe." What is the last name?

7 A. Gallegos.

8 Q. You said "DeLeon." Is that -- what's his
9 first name?

10 A. Angel DeLeon.

11 Q. Okay.

12 MS. ARMIJO: Now, Your Honor, should this
13 be a good time to break?

14 THE COURT: All right. I'm going to have
15 to have a proceeding here before I close out
16 Ms. Bean's day. So we'll go ahead and take a break,
17 and I'm going to stay on the bench and work a little
18 bit longer.

19 All right. I appreciate your hard work
20 today. See y'all at 8:30 in the morning. We'll try
21 to be ready for you. I appreciate all you're doing
22 for us. Y'all have a good evening.

23 (The jury left the courtroom.)

24 THE COURT: Mr. Torres.

25 Let me just ask a couple of more questions

1 here. Why don't the defendants file on this --
2 whatever you did to comply -- I want the defendants
3 to make representations about their efforts to
4 comply with the order.

5 I guess I'm skeptical of Frederico Munoz
6 not objecting to the production of his medical
7 records, but he objected to the PSR. That makes me
8 nervous. So file something that shows that.

9 I'll have Ms. Bevel mark your email to me
10 as Exhibit 10 to her Clerk's minutes.

11 MR. CASTLE: Okay.

12 THE COURT: All right. We'll go off the
13 record for the day. Everybody can leave, except I
14 need to see the Government to make a final
15 presentation on Mr. DeLeon's availability.

16 MR. BENJAMIN: The last issue I wanted to
17 address just briefly, Your Honor, so the Court is
18 aware of it, I'm going to make a filing tonight for
19 a motion for adjournment on Counts 4 and 5. I've
20 talked to the Government. And it's based upon the
21 discovery that was produced last night.

22 THE COURT: Adjournment?

23 MR. BENJAMIN: Yes, Your Honor. There was
24 a discovery dump. I just wanted to alert the Court
25 to the filing.

1 THE COURT: Okay. All right. We'll go
2 off the record.

3 (A discussion was held off the record.)

4 MR. SINDEL: Let the record reflect that
5 the defendants do not agree with an ex parte
6 proceeding, but I understand that the Court --

7 THE COURT: I thought you did. Up here at
8 the bench I asked, and everybody said it was okay.

9 MR. SINDEL: Well, I just -- for the
10 record, Your Honor, I understand that they think
11 it's means and methods. I'm just going to object at
12 this time.

13 THE COURT: All right. Let me take it --
14 I thought the defendants agreed to have me hear
15 this, but -- all right.

16 MR. BURKE: I apologize. I don't know why
17 it would be ex parte. I don't understand why it
18 wouldn't be in discovery, the efforts that were
19 made. And if there were efforts, that we wouldn't
20 be having this discussion probably. I don't know.

21 THE COURT: All right. Well, I guess I'll
22 need some argument on it tomorrow as to why I should
23 do this ex parte. I thought we had an agreement on
24 it. I wouldn't have sent the jury back. I thought
25 it had been untangled.

1 All right. Good night.

2 (The Court stood in recess.)

3

4 April 25, 2018

5 THE COURT: Good morning, everyone. It
6 looks like we have all the defendants and an
7 attorney for each defendant.

8 I looked a little bit at the evidentiary
9 issue that we had at the end of the day. I do think
10 with the 302 there is sufficient corroboration of
11 what Mr. Torres is saying with Michael Jaramillo.
12 There are some differences between what Mr. Torres
13 is saying and Mr. Jaramillo is saying, but not on
14 the details that he's going to testify on -- I think
15 the statements in the 302 that DeLeon held him down.
16 He doesn't give quite the location that Mr. Torres
17 does. But I think that's sufficient corroboration
18 for it to come in, this small portion that
19 Mr. Torres testified.

20 The question becomes whether Mr. DeLeon is
21 unavailable. I'm uncomfortable. I haven't found
22 anything under Rule 43 that would permit me -- or
23 make me comfortable that I could take the
24 Government's showing of unavailability ex parte.
25 The burden is not terribly high. I mean, it does

1 have to have some showing, both inability to locate
2 the witness and showing a diligent attempt to find
3 the witness. Mr. Beck, Ms. Armijo, do you think you
4 could make that showing, or at least attempt to make
5 that showing with as much public information as
6 possible?

7 MR. BECK: We can, Your Honor. There has
8 been an arrest warrant out for Mr. DeLeon since the
9 case was indicted. There's been attempts to locate
10 him and to arrest him. He's not been arrested to
11 this date. He was, I believe, at some point
12 elevated to the FBI's Top 10 -- not yet elevated to
13 the Top 10. There's been discussion. There's
14 fliers out for his arrest. There's been media
15 attention to it.

16 I would say that -- I would say also that
17 there is authority for the Court hearing this in
18 camera, ex parte. And I'll direct the Court to the
19 law enforcement sensitive qualified evidentiary
20 privilege that was discussed heavily in our brief
21 for the ELSUR devices, document 1551. There's
22 also -- and I'll quote from United States against
23 Winter. That's 641, the Federal 2d Reporter, starts
24 at page 825. It's a 1981 Tenth Circuit decision,
25 page 831. It says, "The law enforcement

1 investigative privilege is, quote, 'based primarily
2 on the harm to law enforcement efforts which might
3 arise from public disclosure of investigatory
4 files.'"

5 And in that case the Tenth Circuit held
6 that it was proper for the Court to hear in camera
7 the United States' evidence assertion of that
8 privilege, and so the disclosure of more information
9 on the outstanding warrant, the media attention to
10 Mr. DeLeon, and more information than what is
11 outstanding in the public sphere, would harm the
12 investigation into locating Mr. DeLeon.

13 It's also, I'll point out to the Court,
14 that this is a preliminary question. It is not a
15 fact which the fact finder will decide. So in that
16 case, there is no right to confrontation. The
17 Confrontation Clause does not apply to the Court
18 finding as a preliminary matter that Mr. DeLeon is
19 unavailable. It's just like any other 104 hearing
20 or 104 decision, just like a suppression hearing
21 where the Confrontation Clause does not apply. The
22 Court has found that in numerous cases looking at
23 suppression hearings. A recent one from 2015 is
24 United States against Ramos. That's at 194
25 F.Supp.2d 1134. The Court

1 quotes United States versus Ramirez, a Tenth Circuit
2 decision, page 1140. The Court quotes the Tenth
3 Circuit as saying, "The Supreme Court has not yet
4 indicated whether the Confrontation Clause applies
5 to hearsay statements made in suppression hearings."
6 The Court has found many times that confrontation
7 does not apply in these preliminary rulings. That's
8 at page 1140 through 1141, Ramos.

9 So there is no Confrontation Clause to
10 what would -- Confrontation Clause right to what the
11 Court would hear to find as a preliminary matter
12 that DeLeon is unavailable.

13 THE COURT: Let me ask you a few
14 questions. If you wish or can answer them, then
15 fine. And then if you choose not to because of the
16 sensitivity of the investigation, but is it fair to
17 say that the Government with the arrest warrant has
18 been unable to locate him?

19 MR. BECK: I can't answer that. I think
20 the testimony in this court has been -- in this
21 trial has been: It was asked of Special Agent Acee
22 whether DeLeon was -- I think whether he was
23 arrested, I think. I think Special Agent Acee said
24 no. I think the next question was: "Do you know
25 where he is?"

1 Special Agent Acee said, "I prefer not to
2 answer," and then we moved from there. So that is a
3 question I also would prefer not to answer.

4 THE COURT: All right. Well, let me give
5 it some thought. What else do we have from the
6 Government's standpoint with Mr. Torres? Do you
7 have further questions or are you done with him?

8 MR. BECK: I think there's probably about
9 15 --

10 MS. ARMIJO: Not much more. I have a few
11 more questions with him, but not a whole lot more,
12 Your Honor.

13 THE COURT: Let me give it some thought.
14 I had assumed that we'd probably get done more
15 publicly than the Government is willing to put on
16 the record publicly, so let me think about whether
17 I'm prepared to take information from the Government
18 ex parte. So I may not -- I may not reach a
19 decision on this while you have him on direct,
20 Ms. Armijo. But if I decide to take more
21 information, I can, and you can re-call him or ask
22 it in redirect, and then I can give the defendants
23 an opportunity to cross him on it.

24 MR. BECK: I think the pertinent portion
25 of our brief, which cites the Tenth Circuit case

1 that I read, document 1551, talks about the law
2 enforcement qualified privilege on pages 12 through
3 18.

4 THE COURT: All right. I'll take a look
5 at that. I didn't think of that as being something
6 that was applicable last night, so I need to take a
7 look at it.

8 All right. Mr. Castle, you had something
9 this morning?

10 MR. CASTLE: Yes, Your Honor. The Court
11 might recall at the beginning of the trial in this
12 case, we had revealed that on April 6 we received
13 notice, a 302 from an individual by the name of
14 Robert Lovato. The Government informed us after we
15 recessed last night that they were going to call him
16 tomorrow. We had indicated to the Court that we had
17 some constitutional, and I had other objections to
18 Mr. Lovato -- a certain portion of his testimony.

19 Mr. Lovato was interviewed in 2011 about a
20 murder that he committed, along with four other
21 people, all of whom were convicted, the murder of
22 Babalu. The Court might have heard something about
23 that. In that 2011 interview, he said that the
24 person who ordered the murder was Felipe Cordova.
25 Then, in 2016, he said he had heard from someone by

1 the name of Juan Mendez that it was Billy Garcia
2 that may have ordered it. Of course, that was
3 hearsay. But on March 28, 2016, he apparently then
4 now says that Billy Garcia ordered the murder.

5 The Court's aware, and I can tell the
6 Court what's happened on this is that we have talked
7 to the defense, and the defense is willing to
8 stipulate that the enterprise, as set forth in the
9 indictment, the Sindicato de Nuevo Mexico, existed
10 during the times alleged in the indictment. And
11 it's further stipulated that the Sindicato de Nuevo
12 Mexico was engaged in racketeering activity during
13 the time period alleged in the indictment.

14 Further, the defendants would stipulate
15 that they will not infer in their questions or argue
16 in closing argument that the enterprise did not
17 exist and that the Sindicato de Nuevo Mexico was not
18 engaged in racketeering activity.

19 The reason all this is relevant is because
20 I believe the Government is offering this as
21 enterprise evidence. And the leading case in the
22 Tenth Circuit is a case, U.S. versus Mahdi,
23 M-A-H-D-I, at 598 F.3d 883. And that allows
24 uncharged misconduct in a racketeering matter, but
25 only if it's a fact at issue. And if the Court --

1 when it reads Mahdi, it's going to see that the
2 defense put the fact in issue in Mahdi, and
3 therefore, they said there wasn't a Sixth Amendment
4 notice violation.

5 Here, we have an indictment that alleges a
6 number of matters. It does not allege the murder of
7 Babalu as even a predicate -- or it's not even
8 mentioned in the indictment at all, never mind that
9 Billy Garcia committed it.

10 Like I said, we've been scrambling on this
11 since we were notified April 6, the Friday before
12 trial. I asked the Court, I think when this
13 happened, when we asked for a continuance, the Court
14 denied it at the time, but did not rule on the
15 admissibility of that.

16 I think at the bare minimum, what I would
17 ask is the Court to allow us to brief the issue, and
18 then Mr. Lovato testify later in this trial. We
19 have tried to obtain Mr. Lovato's file from the
20 district attorney's office through subpoena, because
21 we believe that it would contain information that
22 would dispute this last-minute claim. We've been
23 informed by the district attorney's office that
24 prosecuting Mr. Lovato on the murder of Babalu --
25 Bobby Ortega is his name -- they cannot locate that

1 file at all at this time.

2 THE COURT: Was this the Second Judicial
3 or was this the Fifth that I saw some --

4 MR. COOPER: Fifth.

5 MR. CASTLE: Fifth. We take the Fifth.
6 I've always wanted to say that. But, Your Honor --

7 THE COURT: Let me do this: Why don't
8 y'all circulate your stipulation --

9 MR. CASTLE: It has been.

10 THE COURT: -- and get signatures by
11 everybody, defendants and the necessary lawyers, and
12 I'll take a look at it and consider it.

13 MS. ARMIJO: And Your Honor --

14 THE COURT: I'll give you a chance to
15 respond. But let's -- we've got the jury lined up.
16 Let's go ahead with them this morning.

17 (The jury entered the courtroom.)

18 THE COURT: All right. Everyone be
19 seated.

20 Good morning, ladies and gentlemen. I
21 appreciate you being back and ready to go and on
22 time. We had a few matters we needed to discuss in
23 here, and we're pushing it along as much as we
24 could, but I appreciate your patience with us. And
25 the lawyers and parties have informed me that Las

1 Cruces has very good food trucks, and that by taking
2 late lunches, you miss the food truck. So in honor
3 of food truck Wednesday, we'll be taking a normal
4 lunch break, somewhere in the 11:30, 11:45
5 timeframe, depending on how things go today, this
6 morning. So we'll be taking kind of a normal lunch
7 today, if that helps you with your snacking and
8 things like that.

9 All right. Mr. Torres, I'll remind you
10 that you're still under oath.

11 Ms. Armijo, if you wish to continue your
12 direct examination of Mr. Torres, you may do so at
13 this time.

14 MS. ARMIJO: Okay. Thank you, Your Honor.

15 THE COURT: Ms. Armijo.

16 LAWRENCE TORRES,
17 after having been previously duly sworn under
18 oath, was questioned, and continued testifying
19 as follows:

20 CONTINUED DIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Now, Mr. Torres, yesterday I believe -- do
23 you recall being interviewed several times in this
24 case by law enforcement in reference to -- and I'll
25 be specific -- in reference to the 2001 murder?

1 A. I really can't remember because there were
2 a lot of things happened.

3 Q. Okay. Do you remember being interviewed
4 at least one time in 2003 and giving a statement?

5 A. Yes, I do.

6 Q. And then do you recall in 2017 the FBI
7 recontacting you and talking to you again?

8 A. Yes, I do.

9 Q. And then do you remember -- let's see;
10 we're in April -- last month going to the FBI office
11 and meeting me for the first time and sitting down
12 and talking?

13 A. Yes, I did.

14 Q. Okay. Now, are you aware that like when
15 law enforcement talked to you, that they write
16 reports to put down what you say?

17 A. Yes.

18 Q. Okay. Now, I am going to show you -- I
19 believe I had asked you yesterday a question about
20 whether or not you were talking -- why don't you
21 tell us again. You were talking about a point in
22 time when Joe Gallegos showed you his hand. Do you
23 recall that?

24 A. Yes, I do.

25 Q. Okay. And where was that at, again?

1 A. More or less on the palm, somewhere around
2 there.

3 Q. Okay. And do you remember when that was
4 in the day?

5 A. What do you mean, when it was on that day?

6 Q. Like, do you remember if it was in the
7 morning, in the afternoon, at night, or was it --

8 A. When I seen it, when I seen it?

9 Q. When he showed you his hand.

10 A. When we went to the chow hall.

11 Q. Okay. So that would have been -- okay.
12 Do you go to the chow hall just for breakfast, or do
13 you go for breakfast and lunch and dinner?

14 A. Well, they had us holding; they was
15 holding us out there because of the murder, and they
16 had us out there and they let us go and eat some
17 sandwiches in there. They took the handcuffs off,
18 and we sat there, and that's where I seen it.

19 Q. Okay. Now, I'm going to show you first --
20 and Counsel, it's Bates stamp 43599.

21 MS. ARMIJO: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 BY MS. ARMIJO:

25 Q. Mr. Torres, do you see that this indicates

1 a date here that you -- I know your name is blocked
2 off, but this is an interview that you gave with the
3 FBI on March 10th of 2017?

4 A. Yes.

5 Q. Okay. And I'm going to direct you to --
6 just to read to yourself, Bates number 43599, this
7 second paragraph, to see if this refreshes your
8 memory.

9 MR. SINDEL: Your Honor, this witness
10 hasn't said anything about needing his memory
11 refreshed.

12 THE COURT: I do think the defendants are
13 right. And I noticed Mr. Beck was doing it
14 yesterday as well. Let's wait till we need it
15 refreshed.

16 MR. SINDEL: Your Honor, the witness is
17 now reading the report.

18 MS. ARMIJO: Let me have this. I guess
19 I'm going to impeach him and I'll read him the
20 statement.

21 MR. SINDEL: I'm going to object to her
22 reading it.

23 MS. ARMIJO: Not reading.

24 THE COURT: Those are two different
25 things, impeachment and refreshing memory. Let's

1 just see if he needs his memory refreshed, if you
2 want to refresh it.

3 BY MS. ARMIJO:

4 Q. Would you like to review a report to
5 refresh your memory?

6 MR. SINDEL: Your Honor, again, he hasn't
7 said anything about needing --

8 THE COURT: I think you just need to ask
9 some questions, and then we'll see if he either
10 needs to be impeached or his memory refreshed. I
11 just don't think we're there yet.

12 BY MS. ARMIJO:

13 Q. Okay. Let me back up. When Joe Gallegos
14 showed you his hand, do you recall him saying
15 anything to you?

16 A. No, he didn't say nothing. He just showed
17 me his hand and, like, smiled.

18 Q. Okay. And had a smile?

19 A. Yeah.

20 Q. Okay. Do you recall saying, then, that
21 Gallegos -- hold on -- "At chow hall Gallegos showed
22 him a cut on his palm and stated, 'Look what
23 happened to that rat.'"

24 MR. SINDEL: Your Honor, again, she's
25 reading from the report. He hasn't said he forgot

1 anything. He said Joe Gallegos didn't say anything.

2 THE COURT: I think she's now impeaching
3 him, so I think it's different. Overruled.

4 A. When DeLeon or Troup -- I think it was
5 Troup. I'm pretty sure it was Troup that said that.
6 Huero Troup.

7 BY MS. ARMIJO:

8 Q. Huero Troup said that?

9 A. Yeah.

10 Q. You don't recall stating that it was
11 Gallegos that said that when he was showing you your
12 (sic) hand?

13 A. Well, he just said something about a rat
14 or something, I don't know, but you know, it was
15 like we were eating food, and I was hungry, so you
16 know, I wasn't -- I was looking at the cut and
17 everything, but that's about it. And then like an
18 impression, like, the dude was trying to impress me,
19 or something. I don't know.

20 Q. And you said that he had a smile?

21 A. Yeah.

22 Q. Okay. Now, do you recall also -- I'm
23 going to go back to a separate -- you mentioned
24 Huero Troup. You talked yesterday about Huero Troup
25 saying something about Pancho. What do you recall

1 Huero Troup saying about that?

2 A. Yeah, he --

3 MR. BURKE: Asked and answered yesterday.

4 THE COURT: Overruled.

5 A. He would come in a little while to the
6 window and start yelling, "That rat," and "This and
7 that rat" and "Pancho," you know, things like that,
8 no? He come to the window for shower time, no?
9 When they was calling showers. They would let us
10 out for showers.

11 BY MS. ARMIJO:

12 Q. Do you recall him saying anything in
13 reference to Pancho being killed?

14 MR. BURKE: Same objection, Your Honor.

15 THE COURT: Overruled.

16 A. Did he imply anything about Pancho being
17 killed?

18 BY MS. ARMIJO:

19 Q. Did he say anything about Pancho being
20 killed?

21 A. Well, we were there for about a month and
22 a half. So yeah, he did imply a bunch of times.

23 Q. Okay. And what did he say?

24 A. Well, he just said that one time they took
25 him out to investigate him, or something, and he

1 said the STIU and STG, or whatever, was telling him
2 that he had killed Pancho, that they were trying to
3 say that he killed Pancho.

4 Q. Okay. Do you recall in that March
5 interview of 2018 saying that Troup yelled --

6 MR. BURKE: Objection, Your Honor. This
7 has been asked and answered several times. This is
8 improper impeachment of her own witness.

9 THE COURT: Well, she can impeach her own
10 witness if she wants. Overruled.

11 MR. BURKE: But she cannot do it
12 improperly, because the question has been asked
13 several times, and now she's just fishing around.

14 THE COURT: Overruled.

15 BY MS. ARMIJO:

16 Q. Do you recall telling the FBI in March of
17 2017 that Troup yelled --

18 MR. BURKE: Leading, Your Honor.

19 THE COURT: Overruled.

20 BY MS. ARMIJO:

21 Q. Do you recall telling the FBI in March of
22 2018 that Troup yelled, "I killed Pancho"?

23 A. Telling the FBI, yeah. I told the FBI.
24 He said that -- he was saying what I told you. He
25 would come to the window. In the time that the STIU

1 unit and the STG unit came over there, investigated
2 him, he came out of his cell and he was standing
3 right there in front of, you know, the doors, like,
4 saying that "They're trying to say that I killed
5 Pancho," no?

6 Q. Okay. Now, I know that you said this, and
7 then this is a very specific question as to whether
8 or not he was saying what STG was saying. But apart
9 from that, did he say to you or do you recall saying
10 that he said, "I killed Pancho"?

11 MR. BURKE: Asked and answered a half
12 dozen times. Leading.

13 THE COURT: Overruled.

14 A. Well, he said Pancho was a F'ing rat, and
15 this and that, and, you know, about the rats and
16 things like that, no? But that's what he was
17 saying, no?

18 BY MS. ARMIJO:

19 Q. Okay. Now, also going to -- can we please
20 display Exhibit Number 185 which is in evidence?

21 All right. Mr. Torres, can you see the
22 screen in front of you?

23 A. Yes.

24 Q. Do you recognize that?

25 A. That's Edward Huero Troup.

1 Q. Huero Troup?

2 A. Right.

3 Q. And I'm going to also display Exhibit
4 Number 181. Okay. Do you recognize that person?

5 A. Yes, I recognize that person.

6 Q. And who is that person?

7 A. That's Joe Gallegos.

8 Q. And I'm also going to show Defense Exhibit
9 DY-2, which I believe should be Angel DeLeon. Do
10 you see the screen?

11 A. Yes, I do.

12 Q. Do you recognize that person?

13 A. Yes, that's Angel DeLeon.

14 Q. And are those the three people that you
15 were talking to us about yesterday and today?

16 A. Yes, those are the people that I was
17 talking about.

18 MS. ARMIJO: All right. May I have a
19 moment, Your Honor?

20 THE COURT: You may.

21 MS. ARMIJO: I pass the witness.

22 THE COURT: All right. Thank you,

23 Ms. Armijo.

24 Mr. Burke, do you have cross-examination
25 of Mr. Torres?

1 MR. BURKE: I do, Your Honor.

2 THE COURT: Mr. Burke.

3 MR. BURKE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 Q. Mr. Torres, you, in response to a question
6 by Ms. Armijo, denied being a member of the SNM. Do
7 you recall that?

8 A. I deny it, yeah.

9 MR. BURKE: All right. May I approach the
10 witness?

11 THE COURT: You may.

12 MS. ARMIJO: May I see what you have?

13 MR. BURKE: 30049, 12620, 12650.

14 MS. ARMIJO: You lost me.

15 MR. BURKE: 12645, 12648, 12647, 43569,
16 43571, 43593.

17 BY MR. BURKE:

18 Q. How are you?

19 A. All right.

20 Q. I'm going to show you some documents to
21 see if it refreshes your memory about whether you
22 were with the SNM. Okay?

23 MS. ARMIJO: And Your Honor, he hasn't
24 said his memory needs to be refreshed.

25 THE COURT: Well, he can still refresh it.

1 I think he's now asked a question, and he must have
2 some basis for thinking that he --

3 MR. BURKE: Thank you, Your Honor.

4 BY MR. BURKE:

5 Q. So here is a Department of Corrections
6 document from March 17, 1992, and I'd like you to
7 read that there, if you don't mind.

8 MS. ARMIJO: Your Honor --

9 A. I can't really read that.

10 THE COURT: Hold on.

11 BY MR. BURKE:

12 Q. Let me read it to you, and you tell me if
13 this refreshes your memory.

14 THE COURT: No.

15 MS. ARMIJO: Your Honor, I'm going to
16 object --

17 THE COURT: I agree. Show him the
18 document. If you're trying to refresh his memory,
19 let him look at the document, and then he can turn
20 it over, and then you can ask the question.

21 MR. BURKE: He said he couldn't see, Your
22 Honor.

23 THE COURT: Well, I don't think we can
24 have documents read to the jury by the counsel, so I
25 don't think that's going to work.

1 MS. ARMIJO: And Your Honor, can we
2 have -- he listed about six different Bates. I
3 don't know what he's exactly showing, which Bates
4 number he's showing.

5 MR. BURKE: I'm showing documents from
6 the --

7 THE COURT: Let's take them one at a time,
8 Mr. Burke. Which one are you showing to him now?

9 MR. BURKE: This is a New Mexico
10 Corrections Department dated March 17, 1992.

11 THE COURT: Mr. Torres, let me ask you, is
12 it that the print is small? Do you need glasses?
13 What would help you read?

14 THE WITNESS: I have to look at my --

15 THE COURT: Where are your glasses?

16 THE WITNESS: I have no glasses. I've had
17 no money to buy any.

18 THE COURT: I sometimes wear --

19 THE WITNESS: I can see, but it depends
20 where I'm at, the lighting and everything, no? I
21 can read and I can comprehend.

22 THE COURT: I have some glasses that I
23 wear to read. Would these be helpful to you?

24 THE WITNESS: Okay.

25 THE COURT: Why don't you give it a try.

1 And if not, maybe what we can do is turn off the
2 screen for the jurors, and maybe you can put them up
3 on the screen and put it in big print.

4 MR. BURKE: That would be great.

5 MS. ARMIJO: Could we have a Bates number
6 to the exact page you're showing?

7 MR. BURKE: Yes, again, it is 30050.

8 THE COURT: Mr. Torres, here's --

9 BY MR. BURKE:

10 Q. This paragraph right here, and then you
11 see at the bottom where it has that Number 30050,
12 that's what we were talking about.

13 A. This one right here, this one?

14 Q. Here, try mine.

15 A. This one right here?

16 Q. Yeah, the yellow. Were you able to read
17 it?

18 A. I was able to read it, but I never heard
19 nothing like that. My name -- there is no signature
20 of mine here.

21 Q. Well, it is your name there, isn't it?

22 A. It's my name, but I didn't say nothing of
23 that sort or nothing.

24 Q. So now that you've read it, you would deny
25 what the New Mexico Corrections Department said

1 about you being an active gang member of the SNM and
2 recruiting gang members and engaged in assaultive
3 behavior. You think they got that wrong.

4 A. Oh, yeah.

5 Q. Okay. All right. And then now I'm going
6 to show you 12620. And this is a little better,
7 because this one actually has a picture that you're
8 in. And this is a document, once again, New Mexico
9 Corrections Department, and it says at the top STG
10 correspondence and STG photographs. And it's dated
11 October 27, '98. Why don't you look at the
12 highlighted parts and then look at the picture.

13 A. No, this, to me, looks like just like
14 documentation that was printed out and there's no
15 signature of mine there. And the picture up above
16 is just another picture, like, there was pictures
17 taken all over. I've been taking pictures for -- I
18 mean, I've been in the pen a long time, you know.

19 Q. Right.

20 A. And I've been -- I got pictures with
21 Italian Mafia, no? People.

22 Q. Probably with the Eme, too?

23 A. With every gang you can almost think of.

24 Q. The Surenos?

25 A. But like I said, there's no -- that

1 doesn't mean that I'm in there just because I take a
2 picture. I have taken pictures of all kind -- I can
3 take a picture with you. You don't come down there.

4 Q. Okay. So you again would deny the
5 conclusion of the New Mexico Corrections Department
6 that this photograph, which they think shows you're
7 SNM -- you would deny that?

8 A. Yeah.

9 MS. ARMIJO: Your Honor --

10 THE COURT: Sustained.

11 A. Saying and knowing are two different
12 things.

13 THE COURT: Well, hold on, Mr. Torres.
14 I'm sustaining the objection to the question. It
15 can't be asked that way.

16 BY MR. BURKE:

17 Q. All right. You see that they believe this
18 is a Security Threat Group photograph; right?

19 A. I don't know what they believe. But they
20 sure were doing a lot of wrong things apparently, to
21 what I heard, you know.

22 Q. Do you remember being photographed with
23 Max Gutierrez and Earl Shawn?

24 A. What?

25 Q. Do you recognize these people in this

1 photograph?

2 A. Max Gutierrez?

3 Q. Yeah.

4 A. Which one is Max Gutierrez? The one to
5 the left?

6 Q. That's what it says.

7 A. I see Max Gutierrez. He was -- he was one
8 of my best friend's son, I think.

9 Q. Are you in that picture?

10 A. That's what I took -- yeah, I'm in that
11 picture, there.

12 Q. Now, here's a document from 2002. Why
13 don't you take a look at that. Put the judge's
14 glasses on.

15 A. As a matter of fact, this guy here was
16 killed also.

17 Q. Yep, he was.

18 A. I probably will get killed, too. But it
19 don't matter.

20 Q. In 2002, do you see -- why don't you read
21 that?

22 MS. ARMIJO: Can we get a Bates?

23 THE COURT: What document is it, the Bates
24 number?

25 MR. BURKE: He's got it.

1 A. Based on that documentation without a
2 signature, there is no indication that I was even
3 there.

4 Q. But you see it does say New Mexico --
5 MS. ARMIJO: I'm going to object --

6 A. I've got a thousand million papers right
7 there in my house with New Mexico Department of
8 Corrections.

9 THE COURT: Hold on, Mr. Torres. Let
10 Mr. Burke give Ms. Armijo the document number.

11 MR. BURKE: 12650. These are all from the
12 STIU file you produced.

13 MS. ARMIJO: I don't dispute that it's the
14 STIU file. But I think he's trying to bring in
15 hearsay.

16 THE COURT: Well, let me take it a
17 question at a time. Go ahead and ask your question,
18 Mr. Burke.

19 BY MR. BURKE:

20 Q. All right. So you see that it's an
21 official kind of document at the top with all those
22 words; right?

23 A. I don't think --

24 Q. And you see it says you're an SNM suspect;
25 right?

1 A. They could say whatever it says. I mean,
2 no.

3 Q. They made a mistake?

4 A. I think they did.

5 Q. Okay. And read this one. This is 12645.
6 Do you see this?

7 A. No, there's documentation that -- it's
8 just documentation that -- it's just hearsay.

9 Q. So this 2002 document saying you're SNM is
10 wrong, also?

11 MS. ARMIJO: Your Honor, I'm going to
12 object.

13 A. It's all hearsay.

14 THE COURT: Sustained.

15 MS. ARMIJO: It doesn't say that.

16 THE COURT: Mr. Torres, I'm sustaining the
17 objection to the question.

18 Don't ask the questions that way,
19 Mr. Burke.

20 There is no question, Mr. Torres. Let
21 Mr. Burke ask the question.

22 BY MR. BURKE:

23 Q. Here's a 2006 document. Please take a
24 look at that.

25 MS. ARMIJO: Can you please give me the

1 Bates stamp?

2 MR. BURKE: 12648.

3 A. I'm not exactly --

4 MS. ARMIJO: And Your Honor, before
5 defense counsel asks the question, I'm going to
6 object because it's the same type of document.

7 THE COURT: Well, let's see if Mr. Burke
8 asks the question in a different form.

9 BY MR. BURKE:

10 Q. You see that this also has New Mexico
11 Corrections Department Security Threat Group alert
12 form. Do you see that at the top? So you can read
13 that without the glasses?

14 A. Well, you're telling me --

15 Q. Okay, can you read it?

16 A. Where?

17 Q. At the top.

18 A. I can see it.

19 Q. Okay. And you would dispute the
20 conclusion that you're STG -- SNM?

21 MS. ARMIJO: Your Honor, I object.

22 THE COURT: Sustained.

23 MR. BURKE: Can we approach, Your Honor?

24 THE COURT: You may.

25 (The following proceedings were held at

1 the bench.)

2 MR. BURKE: I'm a little surprised,
3 really. You let her ask the same question six times
4 and impeach him, her witness. I understand the rule
5 has changed on that, and read the quotes, and you
6 let her do that, and you're not letting me use an
7 official document from -- that they produced from
8 the --

9 THE COURT: She was impeaching the
10 statements of -- these are not his statements.
11 These are just somebody else.

12 MR. BURKE: He stated he wasn't in the
13 SNM.

14 THE COURT: I know, but you're not
15 impeaching him. You're just reading statements out
16 of some report. And so you're testifying now. So
17 I've got to sustain. You know that.

18 MR. BURKE: I believe I'm allowed to go
19 into this.

20 THE COURT: You can go into the topic.
21 Nobody is stopping you. But you just can't stand
22 there at the witness box and read documents.

23 MR. BURKE: Well, I don't think I'm really
24 doing anything different than what the prosecution
25 did, and it's my cross-examination.

1 THE COURT: I understand that, but if you
2 have a statement that he made, you can impeach him
3 with that statement. But if you're going to take
4 other people's statements about him, that's not
5 impeachment.

6 MR. BURKE: Okay.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right, Mr. Burke.

10 MR. BURKE: Thank you, Your Honor.

11 BY MR. BURKE:

12 Q. Do you know what the STG is?

13 A. Not really.

14 Q. Do you know what the STIU is?

15 A. I've heard of it.

16 Q. And what does that stand for?

17 A. It's an intelligence agency.

18 Q. And they investigate gangs?

19 A. They investigate all kinds of things.

20 Q. And then even though there are all these
21 documents, you deny you were SNM; is that correct?

22 A. Yes, I do.

23 Q. All right. Do you remember being an FBI
24 informant in 2012?

25 A. Yes.

1 Q. And do you remember that the reason that
2 you became an informant was because you were SNM and
3 you were at the penitentiary and they thought you
4 could get information for them?

5 A. No, that's not correct.

6 Q. You don't remember that?

7 A. No, that's not correct.

8 Q. All right. And then do you remember being
9 an informant again in 2017?

10 A. 2017, this was last year?

11 Q. Yes, sir.

12 A. Yeah.

13 Q. Okay. And do you remember the FBI wanted
14 to have you be an informant because you were SNM?

15 A. No.

16 Q. Let me see if this refreshes your memory.
17 This is 43574. This is -- do you see this is an FBI
18 form? Can you see that?

19 A. I see "FBI investigation."

20 Q. Can you read that?

21 A. Read it for me.

22 Q. Okay. It says CHS --

23 MS. ARMIJO: Your Honor, I'm going to
24 object.

25 MR. BURKE: He asked me to read it for

1 him.

2 THE COURT: Well, but that's not proper.

3 Sustained.

4 BY MR. BURKE:

5 Q. Do you see what the FBI is saying about
6 you?

7 A. Well, that's not the reason they came.
8 They came because of the statement that I made with
9 the FBI.

10 Q. But they thought you were SNM.

11 MS. ARMIJO: Objection, foundation.

12 THE COURT: Sustained.

13 BY MR. BURKE:

14 Q. Do you remember being paid by the FBI?

15 A. No, I wasn't paid. I was given some money
16 by Nancy Stemo, but it was for commissary, because I
17 didn't have no money at all; I was broke. And I
18 didn't have no cosmetics, I didn't have no socks, no
19 boxers, no nothing. And they helped me out with a
20 little bit of money on my books.

21 Q. Okay.

22 A. But it's legal. You could argue with
23 them. Don't argue with me about that.

24 Q. Pardon?

25 A. Don't argue with me about that. Argue

1 with them about that.

2 Q. Oh, I don't want to argue with you, sir.

3 A. Sure.

4 Q. So you were paid \$250 on May 23. Do you
5 see that?

6 A. Yeah.

7 Q. And then you were paid another \$300 on
8 August 24. Do you remember that?

9 A. I wouldn't say I was paid; I was given,
10 because I made the statement before I even knew
11 Nancy.

12 Q. Okay. But you got the money for the
13 statement?

14 A. No, I didn't get no money for no
15 statement.

16 Q. And then on September 27 you were paid
17 another hundred dollars; right?

18 A. Yes.

19 Q. Is that right?

20 A. Yeah.

21 Q. Thank you, sir. I'm going to have a few
22 questions from out here, and I'll get away from you.

23 Could we see 591? Do you see that on the
24 screen there, Mr. Torres?

25 A. Barely. I can barely see it. It's real

1 blurry on this one. The picture is blurry. What is
2 that? Another picture?

3 Q. Yes, sir.

4 A. What did you want me to see?

5 Q. Can you see that?

6 A. Not really. I could see the one in front
7 of me better.

8 Q. Which one can you see?

9 A. That one, I could see it better. That one
10 in front of me.

11 Q. Okay, good.

12 A. You've got to turn it around.

13 Q. So that's the right distance for you?

14 A. No, not really. If you could bring it up
15 more. I can't really see it. That's too far. What
16 do you want me --

17 Q. Do you recognize David Calbert?

18 A. Who?

19 Q. David Calbert?

20 A. No.

21 Q. Rolando Garza?

22 A. No.

23 Q. Angel DeLeon, do you recognize?

24 A. I don't recognize him, because I can't see
25 him that good from here. But I know him.

1 MR. BURKE: Okay. May I approach the
2 witness?

3 THE COURT: You may.

4 BY MR. BURKE:

5 Q. Let me show you an exhibit that was shown
6 to you yesterday. Do you recognize yourself in this
7 picture?

8 A. I recognize myself, yeah.

9 Q. And that's an accurate picture of you way
10 back when; correct?

11 A. Oh, that's --

12 Q. With the baseball hat?

13 A. I'd say about -- I don't know how many --
14 that's a long time ago.

15 Q. 2001. Does that sound right?

16 A. That's close to 20 years, right around
17 that range.

18 Q. It's like 17 years?

19 A. Yeah.

20 Q. All right. And that is an accurate
21 picture of you?

22 A. It's not an accurate -- it's not accurate,
23 really.

24 Q. But it is you?

25 A. I mean, I was out in the yard. They was

1 having tournaments and stuff, no?

2 Q. So they were taking pictures.

3 A. They were taking pictures. They always
4 take pictures everywhere, in the gym, you know.

5 Q. And that's a picture of you?

6 A. That's a picture.

7 MR. BURKE: Move the admission of 591.

8 THE COURT: I think 591 --

9 MR. BURKE: 595, sorry.

10 MS. ARMIJO: We admitted this yesterday.
11 We just admitted one without the names, but I don't
12 oppose this one being admitted, as well, but the one
13 that we admitted yesterday --

14 MR. BURKE: The names were --

15 THE COURT: Do you want the names in?

16 MR. BURKE: Yes, please.

17 THE COURT: All right. Then that one is
18 591; correct? The one that was admitted yesterday?

19 MS. ARMIJO: It's right here.

20 MR. BURKE: I think 591 was yesterday, and
21 this is 595.

22 MS. ARMIJO: The one admitted yesterday
23 was 800-A.

24 MR. BURKE: This is a larger version,
25 separated. 800-A was in the STIU file.

1 THE COURT: All right. What's the number
2 on this new one going to be?

3 MR. BURKE: 595.

4 THE COURT: All right. No objection,
5 Ms. Armijo?

6 MS. ARMIJO: I just want to make sure that
7 that's correct, that's Government's 595. And if it
8 is, no objection, Your Honor. I don't mind it
9 coming in. I just want to make sure.

10 THE COURT: Any other objection? Not
11 hearing any, Government's Exhibit 595 will be
12 admitted into evidence.

13 (Government Exhibit 595 admitted.)

14 BY MR. BURKE:

15 Q. Bates No. 3139. Would you publish it,
16 please? Mr. Torres, would you look at that screen
17 and see if you can see that?

18 A. Ain't that the same one you showed me?

19 Q. Yeah. Do you want to look at this one?

20 A. They're both the same one, aren't they?

21 Q. Yeah, these are the same. That's you;
22 right?

23 A. Yeah, that's me.

24 Q. And then you're standing in between Leroy
25 Lucero and Ray Molina; right?

1 A. I don't know. I don't know who I'm
2 standing on the side of. I just stood there. There
3 wasn't no reason why.

4 Q. Okay. And let's look at the lower left
5 picture. Let's see if you remember him. Do you
6 remember Brian Rascon, Coquito?

7 A. Yes. That's him, yeah.

8 Q. That's him. And he was on the lower floor
9 with you?

10 A. I seen him. I know a little bit about
11 him, not a lot.

12 Q. And you remember Lino Giron?

13 A. Yeah, I've seen him. I don't know a lot
14 about him.

15 Q. So some of these guys look familiar to
16 you?

17 A. They all lived there in P-1.

18 Q. All right. Okay. And the rest of these
19 guys are SNM. Do you know why you would have been
20 in the picture with the SNM?

21 A. A lot of them. There is a lot of them
22 that ain't, I would assume, and that have got
23 killed, or have died, or -- you know.

24 Q. Is Edward Troup in that picture?

25 A. I don't know. I can't see. I can't see.

1 I can't see. I don't know. I can't see him.

2 Q. All right. Thank you, sir.

3 Could we see Exhibit 801, please? 59741.

4 Mr. Torres, do you recognize what this is?
5 It's called a location history. Do you see it
6 there?

7 A. More or less, yeah, I see. On the top, I
8 see the top one.

9 Q. All right. And you -- you see that you
10 were released at the end of 2017?

11 A. I can't really understand this one.

12 Q. Let me ask it a different way, then. Were
13 you in the hospital or in some sort of medical
14 facility before you left the New Mexico Corrections
15 facility?

16 A. Was I in the hospital?

17 Q. Well, it says -- it says, "One bed," and
18 then it says -- the third line down it says,
19 "University of New Mexico Hospital." Do you see
20 that?

21 A. Yeah.

22 Q. Okay. When you were released at the end
23 of 2017, did you spend the last six months of your
24 imprisonment in a hospital?

25 A. No, I don't think so. I was in the

1 prison.

2 Q. You were in the prison? So when it says
3 "hospital" and "bed," you're not remembering being
4 in the hospital?

5 A. I wasn't in the hospital. I was in
6 Central New Mexico Correctional Facility. I've got
7 the paperwork at home.

8 Q. Yeah. All right. I'm now going to ask
9 you some questions about your health. Okay?

10 A. Yeah.

11 Q. All right. And so you have had trouble
12 with your physical and mental health, haven't you?

13 A. I had what they call PTSD at one time, but
14 it went away. But it has nothing to do with my
15 memory, really, and my memory is pretty good. And
16 the only thing right now is that I'm in bad health
17 because of my liver. I have cirrhosis of the liver,
18 which causes --

19 Q. I'm sorry to hear that, really.

20 A. It doesn't matter.

21 Q. Yeah, I'm actually going to ask you about
22 your mental health, though, okay?

23 A. Yeah.

24 Q. All right. Do you remember being
25 diagnosed with Parkinson's disease back in '95?

1 A. I wasn't diagnosed. I was with severe
2 tremors in my right hand.

3 Q. And do you remember having the Corrections
4 Department, as far as the clinical problems, say you
5 were manipulative in '95?

6 MS. ARMIJO: Your Honor, I'm going to
7 object to hearsay.

8 A. I don't even understand why you said that.

9 THE COURT: Hold on, hold on. It does
10 seem that it's an out-of-court statement being
11 offered for the truth. So I'll sustain.

12 BY MR. BURKE:

13 Q. Do you have any memories of that?

14 A. No.

15 Q. All right. Do you have any memories of
16 hearing voices and seeing things that other people
17 cannot see?

18 MS. ARMIJO: Can we have the time period?

19 A. I don't think that --

20 MS. ARMIJO: A time period?

21 A. I don't think it concerns any of this
22 statement that I made. You know, it doesn't have --

23 MR. BURKE: 6/20/06.

24 A. You're going way out of proportion, now.
25 You're trying to trick me into something. You know,

1 I'm here risking my life, probably my family, try to
2 get killed --

3 MR. SINDEL: Your Honor, not responsive.

4 THE COURT: Overruled.

5 BY MR. BURKE:

6 Q. Let's talk about that.

7 A. You do not care about nothing, you know.

8 Q. Let's talk about that. I care quite a
9 bit.

10 A. Let's go back to the statement.

11 Q. Well, I asked you about the statement.

12 A. That's not a statement. That's a medical
13 file.

14 Q. You don't think that the medical records
15 are the --

16 A. You went from STIU to mental health.

17 Q. So has anyone else ever told you you hear
18 voices and see things that other people don't see?

19 A. No.

20 Q. Okay. Have you ever been told that your
21 insight and judgment are poor?

22 A. No.

23 Q. How about --

24 MS. ARMIJO: And Your Honor, I'm going to
25 object to him reading from a document, and I think

1 this is improper questioning.

2 MR. BURKE: I'm just asking him if he's
3 been told that.

4 THE COURT: I don't think you can ask that
5 question. If you want to ask him about his insight
6 and judgment, I think those are fair game.

7 A. I have nothing.

8 THE COURT: Not what other people have
9 said.

10 BY MR. BURKE:

11 Q. Do you think you have good insight and
12 good judgment, sir?

13 A. I think so. I don't think these type of
14 questions are adequate, not for this case anyway.

15 Q. Well, I'm actually sorry I have to ask you
16 this, but --

17 A. I don't care. You don't have to be sorry
18 for me. Be sorry, yourself.

19 Q. Do you remember that you were diagnosed
20 with psychosis?

21 A. I've been diagnosed with all kinds of
22 different things.

23 Q. Including antisocial personality disorder?

24 A. I cannot tell you none of that stuff.

25 That's between my doctor and I, and if you want me

1 to answer about that --

2 Q. You've had severe cerebral trauma. Have
3 you had a lot of head injuries?

4 A. You'd have to go to my doctor about that.
5 I'm not a doctor. I don't have a doctor's degree.

6 Q. Okay. And you've taken some -- did you
7 take medication in the last couple of days?

8 A. I'm on medication, yes. I take
9 medication.

10 Q. What medication have you taken in the last
11 couple of --

12 A. I don't think it concerns you, the
13 medication that I take.

14 Q. You know what? The judge is going to tell
15 you that you do have to answer that question. So
16 please tell us what medication you've been taking.

17 A. My prescriptions are at home, if you want
18 to read them. I don't know how you're going to get
19 them.

20 Q. What's your best memory? You can't
21 remember what it is?

22 A. My -- not really, because they've got a
23 big old name. But I got some prescriptions in my --
24 in my -- in my belongings. But you know, I don't
25 think you want to wait that long to get the

1 prescription. They're right there. I have --

2 Q. Do you remember the diagnosis of
3 pseudodementia? Do you remember that diagnosis?

4 A. Dementia? No.

5 MS. ARMIJO: Your Honor, I'm going to
6 object. He's not --

7 THE COURT: Sustained, sustained.

8 A. I never heard --

9 THE COURT: Mr. Torres, I sustained the
10 objection to that question. You don't need to
11 answer it.

12 BY MR. BURKE:

13 Q. Mr. Torres, you said that you met with
14 Ms. Armijo a month ago or so when you gave your
15 third interview. Do you remember that?

16 A. Yes.

17 Q. All right. How many times have you met
18 with anyone from the Government? And that would be
19 any FBI agent or any of the prosecutors here.

20 A. That's it.

21 Q. What?

22 A. That's it.

23 Q. One time?

24 A. Yeah, from '17 on, I don't remember.

25 Q. What about last night? Did you meet with

1 anyone?

2 A. Last night, no.

3 Q. Weren't you with Agent Stemo yesterday?

4 A. Who?

5 Q. Agent Nancy Stemo. Weren't you with her
6 yesterday?

7 A. Oh, they -- no.

8 Q. You weren't?

9 A. No.

10 Q. You know, there's a number of people that
11 saw you with --

12 A. I've been with her, but I mean, I wasn't
13 with her last night.

14 Q. Were you with her yesterday?

15 A. I don't know what you're trying to imply.

16 Q. Were you with her yesterday?

17 A. Yes, when she brought me to the courtroom.

18 Q. And did you meet with Ms. Armijo anytime
19 between a month ago and when you took the stand
20 yesterday?

21 A. I did.

22 Q. What?

23 A. May I hear the question again? I'm having
24 problems hearing.

25 Q. I'll do it in two questions. You

1 acknowledge that you met with Ms. Armijo on March
2 28, 2018, a month ago. Do you remember doing that?

3 A. I'm still getting confused on the
4 question, because you're not explaining it. You're,
5 like, manipulating the dates and the times and --

6 Q. I apologize for that, sir. I'll --

7 A. -- the names and everything, you know.

8 Q. I'll start over and see if we can -- on
9 the direct examination this morning you said to
10 Ms. Armijo that you did meet with her when you gave
11 a statement. Do you remember that?

12 A. I could hear you better here.

13 Q. Do you want me to get up here?

14 MS. ARMIJO: Your Honor, he's not using a
15 mic. Maybe if you use a mic.

16 THE COURT: I'll let Mr. Burke stand where
17 he wants to, as long as Ms. Bean can hear him.

18 BY MR. BURKE:

19 Q. So I thought Ms. Armijo asked you if you
20 remembered meeting with her when you did this
21 report. No?

22 A. She asked me a while ago. You heard her.
23 You heard what I said, didn't you?

24 Q. You said, yes, you did. Okay. You have
25 met with her other times between then and yesterday,

1 haven't you?

2 A. When I come to the courtroom, I've seen
3 her pass by, and that's it.

4 Q. Did you talk?

5 A. No.

6 Q. And did you talk with --

7 A. "Hi, hello."

8 Q. Did you talk with FBI Agent Acee?

9 A. I don't know who Acee is.

10 Q. Pardon?

11 A. I don't know who FBI Agent Acee is.

12 Q. He's the person that's been bringing you
13 in and out.

14 A. Probably I talked to him, "Hello."

15 Q. But you didn't know who that was?

16 A. I don't know a lot of people, you know.

17 Q. Okay. I'm going to show you and just ask
18 a couple of questions about the reports that
19 Ms. Armijo asked you about. Okay?

20 A. Yeah.

21 Q. I'm going to go right towards the end of
22 the long report. And that was the first one. Have
23 you read this report anytime in the last 14 years?

24 A. No.

25 Q. Okay. Because this was the report from

1 July 22, 2003. Does that cover page look familiar
2 to you?

3 A. Yeah, it looks like a cover page with my
4 name on it.

5 Q. Do you remember looking at it and reading
6 this, ever?

7 A. No.

8 Q. Okay. Well, then, this will go a little
9 slower. Please read what I've highlighted here.
10 It's a question by a fellow by the name of Sprunk,
11 and then it's an answer that you gave.

12 A. Well, you know, like this, I don't know
13 Sprunk. You're talking about the Department of
14 Corrections again, no?

15 Q. It's so unfair. I'm sorry to be doing
16 that, but I'm representing someone.

17 A. It's not unfair. It's just that --

18 THE COURT: Hold on, Mr. Torres.

19 MS. ARMIJO: And I guess I'm objecting
20 because I'm not sure if he is trying to refresh his
21 recollection. If so, it hasn't been shown that his
22 memory is not refreshed.

23 THE COURT: Well, he can show him the
24 document.

25 MS. ARMIJO: Can we have a Bates page?

1 MR. BURKE: 326.

2 THE COURT: Then we'll see what the
3 question is.

4 BY MR. BURKE:

5 Q. All right. Please review that.

6 A. Which one?

7 Q. Where it's yellowed.

8 A. I can barely see the yellow on it. Are
9 you talking about the rights? You've been read your
10 rights. Is that what you're talking about?

11 Q. Keep going.

12 A. Up to -- where do you want me to read?

13 Q. Just the yellow. Do you have it?

14 A. That's the end of it right there, right?

15 Q. No. Right there. That isn't yellow.
16 There is no yellow there.

17 A. I can't see yellow.

18 Q. You're colorblind?

19 A. I can't see very well. I told you.

20 Q. Let's do it like this. Between these two
21 fingers, just read this one and this one. Okay.
22 Thank you.

23 A. I read it, but I really --

24 Q. It's true, isn't it, that the reason you
25 gave the statement was that you wanted to get

1 reinstated on parole; right?

2 A. No, I wasn't. That wasn't the reason that
3 I did the statement.

4 Q. Okay. Read this again, so that I can ask
5 you if this question was asked and this answer was
6 given.

7 A. This guy that did this statement, he was
8 very illiterate. He wasn't really fit for that type
9 of job. I think he got fired or got terminated for
10 some reason or other. But I don't think --

11 Q. Let me make sure I understand. So --

12 A. A lot of that writing --

13 Q. -- you were being asked questions, you
14 were being asked questions by someone who was
15 illiterate?

16 A. A lot of them were. Lawrence Jaramillo
17 was, too. He got pulled out of the department, no?

18 Q. Sergeant Lawrence Jaramillo --

19 A. Well, he was the warden at that time. But
20 he got dismissed. I mean, a lot of these guys have
21 been thrown out of their job because they don't
22 have -- they don't have the thing to do it. You
23 know?

24 Q. I'm sorry for interrupting. Were you
25 done?

1 A. Yeah.

2 Q. Okay. So when it says here that you gave
3 the statement so that you could get help with your
4 parole, that was that illiterate guy putting that
5 down?

6 A. I don't know why he put that down, because
7 we discussed about my parole.

8 Q. All right. Could we see 124, please?

9 Mr. Torres --

10 MR. BURKE: And Your Honor, may I come
11 closer?

12 THE COURT: You may.

13 BY MR. BURKE:

14 Q. There is a picture there.

15 A. Yeah.

16 Q. Okay, and you see 2204 -- thank you.

17 A. Where?

18 Q. Right there. Ms. Gilbert is going to
19 highlight it. Does that look like Pancho Castillo's
20 cell?

21 A. I can't see it there.

22 Q. There is a red tape over it.

23 A. I see a little spot going over it. But I
24 can't really see it that well, to tell you that it
25 is, positively.

1 Q. Could we expand the picture to include the
2 table?

3 And then there is that table over there on
4 the left-hand side. Do you see that there?

5 A. The day room table?

6 Q. Yes.

7 A. Yeah, that's the one that everybody --
8 that's almost right up above where I live. I lived
9 on the bottom.

10 Q. Okay. Thank you.

11 And could we take a look at Exhibit 170?

12 Do you remember this diagram, sir?

13 A. Now you're going to go back to this again?
14 Yeah, I remember.

15 Q. I know it's tough, it's tough. Do you see
16 that diagram? Can we make it a little larger?
17 Thank you.

18 So you came out and you went over by the
19 microwave; is that right?

20 A. Well, the statement tells you what I said.

21 Q. Is it okay if I ask some follow-up
22 questions?

23 A. That was the statement that said that.

24 Q. So you came out and went over by the
25 microwave; right?

1 A. I came out and went over by the microwave.

2 Q. And you were looking for some heroin?

3 That's what you said yesterday.

4 A. Yeah, I was up here.

5 Q. Well, actually, in your statement, you
6 said you got to the bottom of the stairs over there.

7 If you could just --

8 A. Yeah, I got out from my cell. I had to
9 get out. I was locked up. I was locked up in my
10 cell.

11 Q. And you got up -- what time did you get
12 up?

13 A. About 5:30. I get up about 4:00. I was
14 up, but I mean about 5:30 they opened the doors,
15 and --

16 Q. And when you began looking for the heroin,
17 you made your way over to the stairs, didn't you?

18 A. No, I went -- first I went for my water.

19 Q. Okay. Did you ever --

20 A. And I peeked on that side, and Troup was
21 there and DeLeon were there.

22 Q. Okay. Troup was on that table there;
23 right?

24 A. No, he was inside his cell.

25 Q. Pardon?

1 A. He was inside his cell.

2 Q. Did there ever come a time when he --

3 A. Him and DeLeon were in his cell.

4 Q. Pardon?

5 A. Him and DeLeon were in his cell.

6 Q. Did he ever get up onto that table?

7 A. What table? The one on the top tier?

8 Q. Yes, sir.

9 A. I don't know.

10 Q. You said many times that he was on the
11 table. You don't remember that?

12 A. When did I say that he was on the table?

13 Q. You said it on July 22, you said it in
14 2017, and you said it in 2018.

15 A. That he was on the table?

16 Q. Yes.

17 A. No, I said that he was on the door.

18 Q. No, actually, you said he was on the
19 table.

20 A. He was on the door.

21 Q. Okay. So let us just momentarily go
22 through your statements. And we'll try to make this
23 brief. Okay?

24 MS. ARMIJO: May I have a Bates stamp?

25 MR. BURKE: 43598.

1 BY MR. BURKE:

2 Q. This is the second statement that you made
3 in 2017. Okay?

4 A. Um-hum.

5 Q. Ms. Armijo asked you some questions about
6 it that you were very able to answer. Do you
7 remember that? Okay. Now, when you were asked
8 about Mr. Gallegos and what was said, do you see
9 this statement here that I have highlighted?

10 A. Not really. It's too far away.

11 Q. Right there. Do you see it?

12 A. Actually, I see big letters, four letters.
13 That's it.

14 Q. You said, "DeLeon did not mention Troup";
15 right?

16 MS. ARMIJO: Your Honor, I'm going to
17 object to anything that's hearsay --

18 A. I don't remember.

19 MS. ARMIJO: -- and move to strike it.

20 THE COURT: No, overruled.

21 BY MR. BURKE:

22 Q. Do you remember saying in 2017 that the
23 most accurate statement you might have given was the
24 one that you gave in July?

25 A. I couldn't understand you on the first.

1 Q. Do you remember saying in -- here. I'll
2 show this to you.

3 MS. ARMIJO: And Your Honor, can I have a
4 Bates stamp as to the exact page?

5 MR. BURKE: 43599.

6 BY MR. BURKE:

7 Q. I'm going to ask you just to look at this
8 last statement that you made in the third full
9 paragraph. Okay. Read this.

10 A. Read which?

11 Q. This statement.

12 A. Can't you read it for me?

13 MR. BURKE: Sure. Am I allowed to?

14 THE COURT: No. Put the glasses on,
15 Mr. Torres, and see -- right here. Put the glasses
16 on, and see if can you read it, or we'll blow it up
17 on the screen, or --

18 BY MR. BURKE:

19 Q. Do you want to use mine?

20 A. No, I've got --

21 Q. Right here, this one right here where it
22 says "He indicated," is that where -- "He
23 indicated"?

24 A. To right here; right?

25 Q. Yeah.

1 A. Now, what did you want to hear?

2 Q. I'll go ahead and read it to you and you
3 tell me if this refreshes your memory: That the
4 most accurate statement you made would have been in
5 2003. Did I say that right?

6 A. If the statement that I made in 2003 --
7 who said that?

8 Q. You don't remember?

9 A. I said that?

10 Q. Did you?

11 A. I said that to --

12 Q. Was that a true statement?

13 A. -- Ms. Armijo?

14 Q. Yeah. Was that a true statement?

15 A. Yeah, that was a true statement.

16 Q. Okay. When you were looking upstairs, did
17 you see Michael Jaramillo?

18 A. No, I never did see Michael Jaramillo too
19 much. At that time, I seen him moving around
20 downstairs and upstairs; and afterward, after we
21 went to chow, because it was a long time, you know.
22 I mean we're talking about -- we're talking about,
23 like, 5:30 in the morning all the way to about --
24 real late at night, you know, before we -- before I
25 even got back to my cell. And so, you know, during

1 that time, there was chow; chow was called; work
2 call was called, and the whole day passed by, you
3 know. So there was a whole lot of things that
4 happened between all that time. I can't remember
5 every little detail that you want me to remember,
6 no? I can remember what I told you in the
7 statement, and that was what happened, what I seen,
8 and what I did see. That's all I can say.

9 Q. And you said you saw Angel and Joe
10 upstairs; right? You said that; right?

11 A. They were upstairs, yeah.

12 Q. Okay. And you never saw, upstairs,
13 Michael Jaramillo?

14 A. I don't know if I seen him or not. He was
15 moving -- like I told you, he was moving around a
16 lot. If that's the same guy that I seen, I seen his
17 picture recently. He wasn't, you know --

18 Q. You have never said in any of your
19 statements that you saw Michael Jaramillo. Isn't
20 that true, Mr. Torres?

21 A. Well, I never -- I never seen Michael
22 Jaramillo.

23 Q. Thank you.

24 A. But I never seen --

25 MR. BURKE: One moment, please, Your

1 Honor?

2 THE COURT: Certainly.

3 MR. BURKE: Those are my questions, Your

4 Honor.

5 THE COURT: Thank you, Mr. Burke.

6 Any other defendant? Mr. Sindel.

7 MR. SINDEL: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 Q. Good morning, Mr. Torres.

10 A. Good morning.

11 Q. I'd like to ask you some questions. Is
12 that all right?

13 A. All right.

14 Q. Okay. If you have any problems
15 understanding my questions, make sure you stop me
16 and ask me. Okay?

17 A. All right.

18 Q. Okay?

19 A. All right.

20 Q. Can you do that?

21 A. All right.

22 Q. All right. If I use any words you're not
23 familiar with, make sure you tell me. Okay?

24 A. All right.

25 Q. Now, you had talked about meeting or

1 talking with or being with Agent Nancy Stemo; is
2 that right?

3 A. She's the one that brought me to the
4 courthouse and took me back, you know? I mean, I
5 had to be with her. How could I be without her?

6 Q. She's the one that brought you here?

7 A. I don't have a ride.

8 Q. She's the one who brought you here?

9 A. I don't have a ride.

10 Q. She was the one who brought you here?

11 A. To the courthouse.

12 Q. Had you ever met her before?

13 A. Yeah, I met her before.

14 Q. Had she ever talked to you about your
15 memory of what happened in March of 2001?

16 A. She did, yeah, in -- she did.

17 Q. And do you remember when it was that she
18 talked to you, the month she talked to you?

19 A. I can't remember, because there has been
20 so many statements and so many people that have --

21 Q. Okay. Well, let's see. We know now
22 you've said you talked to Nancy Stemo, and you
23 talked with her very briefly yesterday about coming
24 here to court. And you talked to her at another
25 time. Who else have you talked to about this case?

1 A. No, I haven't talked to nobody about this
2 case, other than, you know, myself.

3 Q. Who else have you talked to?

4 A. Myself. That's it. That's the only one I
5 talked to about this case.

6 Q. Nancy Stemo?

7 A. No.

8 Q. You never talked with Ms. Armijo, Maria?

9 A. Sure, I gave her a statement that I gave
10 her.

11 Q. Okay. Well, you just told me you only
12 talked to Nancy Stemo. But now you're telling me
13 you talked to --

14 A. I didn't tell you I didn't talk to Nancy
15 Stemo. I said I didn't talk to Nancy Stemo the way
16 you're thinking. You're thinking a bad way.

17 Q. I'm thinking a what, sir?

18 A. A bad way.

19 Q. I didn't say "a bad way." You did.

20 A. No, you did. You're trying to manipulate
21 me.

22 Q. Okay. I'm trying to manipulate you; is
23 that right?

24 A. Yeah. You -- yeah, you're trying to
25 manipulate me just because you're a lawyer, you

1 know.

2 Q. Okay. Have you ever been -- have they
3 ever challenged you in your medical treatment that
4 you try to manipulate them?

5 A. You know, that's a lot of things that
6 people say.

7 Q. So if it's throughout your medical records
8 that you try to manipulate --

9 MS. ARMIJO: Objection, hearsay.

10 THE COURT: Well, let's don't get into
11 what the medical records say. I think that would be
12 offering them.

13 BY MR. SINDEL:

14 Q. Have you tried to manipulate people in
15 order to get certain benefits for yourself?

16 A. No, I haven't.

17 Q. So you've never, ever manipulated doctors,
18 health care providers, anything like that? Is that
19 your statement?

20 A. Doctors and that's -- like I told you, I
21 don't know why you're coming in with doctors and all
22 kinds of, you know, medical people, when it has
23 nothing to do with medical.

24 Q. Well, I understand you may not think it
25 has anything to do with it, but that doesn't mean I

1 can't ask you about it. Do you understand that?

2 A. No, I don't really understand it, because
3 medical -- under the doctor and client, there should
4 be -- there should be a silence there. They can't
5 be -- they're like lawyers. They take an oath to be
6 doctors, just like you guys.

7 Q. Well, do you understand that there's other
8 members -- other people beside doctors who are
9 providing you with mental health counseling?

10 A. I didn't hear that. What?

11 Q. You understand that there are many people
12 within the institution that met with you and talked
13 to you about mental health counseling?

14 A. Well, I've been in the institution for 40
15 years. I mean, what do you expect? Do you think
16 that somebody from Disneyland is going to come and
17 visit me or what?

18 Q. Well, I just want to ask you if you recall
19 meeting with various health care providers about
20 some of your physical and mental issues.

21 A. There is nothing wrong with my physical
22 and mental issue. The only thing with my physical,
23 I've got cirrhosis of the liver, and that's the
24 doctors and -- between me and the doctors. You
25 don't need to know nothing about my medical history,

1 as far as I'm concerned.

2 Q. Do you remember meeting with a doctor or a
3 health care provider on June 20, 2006?

4 A. No.

5 Q. Do you remember telling someone on June
6 20, 2006, that you had a history of brain injuries
7 or brain trauma?

8 A. No, I don't remember.

9 Q. Do you remember telling someone in 2006
10 that you had a history of taking psychotropic
11 medications?

12 A. I don't remember that.

13 Q. Do you remember indicating to them that
14 you --

15 MS. ARMIJO: Your Honor, I'm going to
16 object to hearsay.

17 THE COURT: Well, I think these are
18 probably perhaps statements made seeking medical, so
19 I think they are permissible. Overruled.

20 MS. ARMIJO: Can we have a Bates stamp,
21 please?

22 MR. SINDEL: 62550.

23 BY MR. SINDEL:

24 Q. Do you remember on that same date, June
25 20, 2006, telling one of the health care providers

1 that you hear voices and see things that other
2 people cannot?

3 A. No, I don't remember that.

4 Q. Do you remember telling them that these
5 voices don't tell you to hurt yourself?

6 A. No, I don't remember.

7 Q. Do you remember them telling you that your
8 memory --

9 MS. ARMIJO: Objection. Hearsay, now.

10 THE COURT: Overruled.

11 BY MR. SINDEL:

12 Q. Did you learn that your memory is
13 impaired?

14 A. No, I never learned that.

15 Q. When I use the word "psychosis," do you
16 know what that means?

17 A. It doesn't really matter, because I mean,
18 you could probably say anything you want. That
19 doesn't mean I have it.

20 Q. So what I'm asking you is: Do you know if
21 you are suffering from psychosis, what that means?

22 A. I'm not suffering from nothing, other than
23 cirrhosis of the liver. That I've told you before.

24 Q. I understand that that's your position,
25 but that's not what I asked you. Do you understand

1 what it means to be suffering from psychosis?

2 A. I don't really care what it means.

3 Q. Okay. I understand you don't care about a
4 lot of things. But I want to know if you understand
5 what it means to be psychotic.

6 A. I'm not psychotic.

7 Q. I didn't ask that you did, did I?

8 A. I don't know what you're -- you ask a lot
9 of questions, medical, that I can't even understand
10 what you're saying.

11 Q. That's why I'm asking you if you know what
12 "psychosis" means.

13 A. I'm not a doctor. I don't have a doctor's
14 degree.

15 Q. I understand that, as well. But you
16 understand what cirrhosis of the liver is; right?

17 A. No, I don't know what it is. I just --
18 what I know is what they've told me, my doctors now,
19 that are treating me now, now, not 10 years ago, 30
20 years ago, 40 years ago, like you're bringing out;
21 20 years ago, five years ago, six years, a bunch of
22 years.

23 Q. You've been asked some questions today
24 about things that happened 17 years ago; right?

25 A. What?

1 Q. You were asked questions today and
2 yesterday about things that happened 17 years ago;
3 correct?

4 A. Certain questions, yeah, I can answer them
5 and I can remember them, yeah.

6 Q. Then I'm asking you --

7 A. I'm not a genius. I won't say I'm an
8 Einstein or...

9 Q. I don't know that you have to be a genius
10 to answer these questions. Okay?

11 A. Well, to you --

12 Q. I'm asking you to answer questions about
13 something that occurred in 2006. That's not 40
14 years ago, is it?

15 A. No, but like I said, I don't have -- I
16 don't have a doctor's degree. I can't answer every
17 doctor's question you ask me about me being this, me
18 being that, and you know, I got psychosis, I've got
19 neurosis, I've got everything you can throw at me in
20 the books. Why don't you look at the real truth,
21 that my family --

22 Q. I'm asking the questions. Okay? So
23 please, just answer my questions. I don't need you
24 to go off and ask me questions. Okay? Is that all
25 right?

1 A. All right.

2 Q. Back to the point, do you know what it
3 means to be psychotic?

4 A. No, I already told you no.

5 Q. All right. So you don't know that if
6 someone is psychotic, they do not -- they're unable
7 to distinguish between reality and nonreality;
8 correct? You don't know that?

9 A. I don't know.

10 MS. ARMIJO: Your Honor, I'm going to
11 object.

12 A. I'm not a doctor. The only times you want
13 me to tell you --

14 THE COURT: Overruled. Overruled.

15 Go ahead, Mr. Torres. You can answer the
16 question.

17 A. I already told you that I don't know. I'm
18 not a doctor.

19 BY MR. SINDEL:

20 Q. Did they tell you you were --

21 A. No, they never told me.

22 Q. Please let me just finish the questions.

23 We'll try to get through this. Okay? Please.

24 Did they tell you --

25 A. No, they never told me nothing.

1 Q. Okay. I have -- here's the thing. This
2 lady over here, this pretty lady over here, she's
3 writing down what we say on a machine. Okay? So if
4 I can't finish my question, she can't write it down.
5 All right?

6 A. Right.

7 Q. All right. So did they tell you in 2006
8 that you were psychotic?

9 (Ms. Armijo stood.)

10 THE COURT: Sustained. Sustained.

11 Q. Have you ever received the diagnosis that
12 you were psychotic?

13 A. I don't remember.

14 MS. ARMIJO: I'm going to move to strike
15 that because that was hearsay, as well.

16 THE COURT: I'll strike the answer and
17 question, and the jury will disregard the statement
18 and the answer.

19 BY MR. SINDEL:

20 Q. Have you ever been highly manipulative of
21 medical staff?

22 A. Not that I know of.

23 Q. Have you ever refused to talk to the
24 physician at the hospital facility about your
25 present complaints?

1 A. I can't remember.

2 Q. Were you ever aware that you were
3 suffering from mild psychosis in 2015?

4 A. I don't know.

5 MS. ARMIJO: Objection, hearsay.

6 THE COURT: Overruled.

7 A. I don't know where you're getting that,
8 but I don't know. I don't know.

9 MR. SINDEL: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. SINDEL:

12 Q. This is a document from the -- can you see
13 this? Do you want to put the glasses on? You
14 better do it. Okay. See your glasses there?

15 MS. ARMIJO: Your Honor, I'm going to
16 object to anything as to these records. It's still
17 hearsay, if he's going to read from them.

18 THE COURT: Well, don't describe the
19 documents to the jury. Let's hear the next
20 question.

21 He may be able to use them permissibly.

22 BY MR. SINDEL:

23 Q. Can you see -- without saying what it is,
24 can you see the heading on this particular document?

25 A. Can I see a what?

1 Q. The heading, right here. See?

2 A. What is it? The Department of Corrections
3 again?

4 Q. Can you see that?

5 A. Department of Corrections?

6 Q. Now, can you see here under a heading
7 "Diagnosis"?

8 A. I see something, yeah, but I can't
9 understand what it says.

10 Q. You can't understand what it says?

11 A. No.

12 Q. Can you read the words? Yes or no?

13 A. No.

14 Q. You can't even read the words?

15 A. I can't read them, not those words. Are
16 those medical words or what?

17 Q. Well, I mean, one word is "mild." Can you
18 read that?

19 A. "Mild"? Which one is that? Oh, mild.
20 Mild. Yeah.

21 Q. Can you read that word?

22 A. No. What does it say?

23 Q. Well, let me ask you --

24 A. "Psychosis."

25 Q. Psychosis? Is that what you said?

1 A. "Psychology."

2 Q. Psychology. Close enough?

3 A. Psychology. Psychiatric.

4 Q. Psychiatric?

5 A. Yeah, those papers are no good.

6 Q. They don't know what they're doing?

7 A. I never signed them. Did I sign them?

8 Yeah, I signed.

9 Q. Yeah, you signed it, didn't you?

10 A. I signed them, yeah. But these papers
11 were the ones that they would give you, and you
12 would sign it just to get out of there, because you
13 didn't want to talk to them.

14 Q. So when they would show you these papers,
15 you just signed off on them, because that was the
16 way to get out of it?

17 A. That's the way -- yeah, the way they would
18 tell you, you know, you could go.

19 Q. If you sign?

20 A. Yeah, where they were telling you that you
21 were this, you were that, trying to put you down --

22 Q. Did they give you medication?

23 A. -- just like you're trying to do. You're
24 trying to put me down, you know.

25 Q. I'm asking you questions, aren't I?

1 A. Yeah, you're asking me questions, but
2 you're trying to manipulate me.

3 Q. Just like you tried to manipulate the
4 entire system?

5 A. No, I didn't try to manipulate. How can
6 I -- the entire system? How could I manipulate?

7 Q. I don't know.

8 A. Yeah, right.

9 Q. Did they give you medications for your
10 mental disorder?

11 A. No.

12 MS. ARMIJO: Your Honor, objection,
13 hearsay.

14 THE COURT: Well, you can ask if they gave
15 him medications and what they were for.

16 BY MR. SINDEL:

17 Q. Did you get medications?

18 A. Not that I know of. Not that I remember.

19 Q. So if the records indicate you got
20 psychotropic --

21 MS. ARMIJO: Your Honor, I'm going to
22 object to what the records indicate. It's hearsay.

23 THE COURT: Sustained.

24 BY MR. SINDEL:

25 Q. Did you ever get any medicine at all while

1 you were in the --

2 A. When I was first --

3 Q. -- 40 years in that facility?

4 A. Forty years?

5 Q. Yeah.

6 A. I don't know.

7 Q. Okay. If you don't know, that's fine.

8 A. I mean, that's 40 years ago, 40 off and
9 on. I mean, man, that's a lot of time, you know. I
10 don't know what kind of medication. Do you want to
11 know what kind and everything?

12 Q. When you signed this document in 2015, did
13 you get medication then?

14 A. No.

15 Q. No? Okay. Were you ever diagnosed with
16 bipolar disorder?

17 MS. ARMIJO: Your Honor, I'm going to
18 object.

19 THE COURT: Sustained.

20 BY MR. SINDEL:

21 Q. Do you know what bipolar disorder is?

22 A. Why don't you bring up the whole
23 medical --

24 Q. It's a medical issue; right?

25 A. It's a medical -- explain it.

1 Q. Did you ever ask anyone what a diagnosis
2 of bipolar disorder meant?

3 A. No, not really. I don't know.

4 Q. Did you ever see -- receive a prescription
5 for Celexa?

6 A. I've received all kinds of things. But
7 that doesn't mean I've taken them.

8 Q. So you might receive medication, but you
9 don't take them?

10 A. I could throw them away. I could have
11 throwed them away. I was in prison. I wasn't in
12 high school.

13 Q. I'm asking you for the time that you were
14 in prison, after you'd been sentenced to 50 years
15 for aggravated robbery.

16 A. Yeah.

17 Q. Did you remember receiving a prescription
18 for Celexa?

19 A. I don't remember if I did.

20 Q. Do you know what dementia is?

21 A. No.

22 Q. Have you ever heard of the term
23 schizophrenia?

24 A. No.

25 Q. Or schizoaffective?

1 A. Effective, what?

2 Q. Schizoaffective?

3 A. What's that mean?

4 Q. I'm afraid I don't want to get in trouble
5 for answering your question. Have you ever heard of
6 that term?

7 A. I never heard nothing like that.

8 Q. Have you ever seen it written down
9 anywhere?

10 A. What?

11 Q. Have you ever seen it written down
12 anywhere?

13 A. I seen what written down?

14 Q. The term schizophrenia or schizoaffective.

15 A. I never saw nothing like that. I don't
16 remember if I have or haven't.

17 MR. SINDEL: 62662.

18 A. He's talking about 100 years ago.

19 MR. SINDEL: May approach, Your Honor?

20 THE COURT: You may.

21 BY MR. SINDEL:

22 Q. Put your glasses on, Mr. Torres.

23 A. I've got them right here.

24 Q. Or put them somewhere. Do you see that?

25 A. Yeah.

1 Q. Is that your signature?

2 A. Yeah, I think I've seen this.

3 Q. What?

4 A. Yeah.

5 Q. And is that -- is there an indication,
6 without saying what it is, of a diagnosis up there
7 at the top?

8 A. There probably is.

9 Q. Okay. Have you ever seen the word
10 schizoaffective before?

11 A. No.

12 Q. Have you seen it in this document?

13 MS. ARMIJO: Objection, calls for hearsay.

14 THE COURT: Sustained.

15 A. I don't remember. I haven't seen it.

16 THE COURT: Mr. Torres, I sustained the
17 objection.

18 BY MR. SINDEL:

19 Q. You don't remember?

20 A. No, I don't have that document.

21 THE COURT: Why don't we take our break
22 for the morning? All right. We'll be in recess for
23 about 15 minutes. All rise.

24 (The jury left the courtroom.)

25 THE COURT: Mr. Beck, at the present time

1 I'm not inclined to use the law enforcement
2 privilege to let the United States keep things
3 secret, and then turn around and use those as
4 evidence, and then keep them secret. I don't think
5 the privilege -- looking at the cases that you
6 reminded me of this morning, I don't see anything in
7 them that allows the United States to use the
8 evidence in a 104 evidentiary hearing to then say
9 that the evidence is secret. I think what that
10 would be doing is, the United States would be using
11 the evidence in an ex parte hearing to establish a
12 fact by a preponderance of the evidence that
13 Mr. DeLeon is unavailable. It seems to me that's
14 different from an in camera review to determine
15 whether something is privileged, which is I think
16 the point of those cases that you pointed me to.

17 So at the present time, while I think the
18 evidence is admissible if Mr. DeLeon is unavailable,
19 I don't think that the Government has yet
20 established that he's unavailable. So at the
21 present time I'm not going to allow the testimony
22 that we heard yesterday.

23 All right. We'll be in recess for 15
24 minutes.

25 (The Court stood in recess.)

1 THE COURT: All right. I think we now
2 have an attorney for each of the defendants; each of
3 the defendants are in the room.

4 Ms. Bevel, why don't you get them lined
5 up?

6 Mr. Castle, on the case that you mentioned
7 earlier, if I understand the case correctly, that's
8 a D.C. Circuit case, not a Tenth Circuit case.

9 MR. CASTLE: Oh, was it? I'm sorry.

10 THE COURT: But I don't think it supports
11 the proposition that you were advancing. I think
12 you wanted to use the case to show that enterprise
13 evidence is admissible only if the defense puts that
14 fact in issue by contesting the enterprise's
15 existence. What that D.C. Circuit case observes is
16 that the defendant put the fact in issue, but it
17 doesn't do what I think you want it to do, and
18 that's to suggest that enterprise evidence would
19 have been admissible otherwise.

20 I guess my thinking is: If the Government
21 is not willing to accept the stipulation, then it
22 seems to me, if the defendants assure me that
23 they're going to conduct themselves in this trial
24 under what they have said in the stipulation, then
25 I'd be inclined to scrutinize some of the

1 Government's evidence. And if it's being offered
2 only for enterprise, and if the stipulation also is
3 as to racketeering activity, maybe not allowing them
4 to put on certain witnesses or evidence, if it's
5 only going to those issues, because I think then
6 those are becoming phantom issues in the trial.

7 So I guess that's, I think, where I'm
8 going. I'm not sure the case supports it. But if
9 that's kind of what you're trying to get me to do,
10 then I guess I'm inclined to maybe move in that
11 direction. So I'll take a look at your offer of
12 stipulation and think about it.

13 One of our jurors, juror number 15, Cory
14 Ray Kennedy, has found out that they're not going to
15 pay him beyond three weeks for jury service, so he's
16 saying he budgeted to live on and now he's not going
17 to be reimbursed by his -- I think he works for a
18 uniform company.

19 But I'm beginning to worry about the pace
20 of the trial. It just doesn't seem like it's moving
21 at a good pace. I guess I'll have to ask you, when
22 we have a chance, where we are in this trial. But I
23 may need to help you move along and stay within the
24 timeframe that we told the jury we'd try the case.

25 All right.

1 MR. BECK: Your Honor --

2 THE COURT: All rise.

3 MR. BECK: -- if I may, for DeLeon, I've
4 got more information I'm willing to share.

5 THE COURT: You can approach the bench.
6 Not at the present time. We're going to take
7 testimony at the present time.

8 MR. BECK: All right.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 All right, Mr. Torres. There you are. If
13 you'll return to the witness box. Mr. Torres, I'll
14 remind you that you're still under oath.

15 Mr. Sindel, if you wish to continue your
16 cross-examination of Mr. Torres, you may do so at
17 this time.

18 MR. SINDEL: Thank you, Your Honor.

19 THE COURT: Mr. Sindel.

20 BY MR. SINDEL:

21 Q. Mr. Torres, right at the beginning of the
22 questions, when I was asking you questions, I'd
23 asked you if you ever talked to anyone about this
24 case, and you said no, you had just talked to
25 yourself. Do you remember that?

1 A. Yeah.

2 Q. So is this something that you talk to
3 yourself about?

4 A. About my case?

5 Q. I'm sorry, what?

6 A. About this case?

7 Q. Yes. Were you talking to yourself in the
8 hallway during this break?

9 A. No.

10 Q. Not at all?

11 A. No.

12 Q. You're sure?

13 A. Positive.

14 Q. If someone -- well, if you weren't talking
15 to yourself, no one would have heard you talking to
16 yourself; correct?

17 A. Correct.

18 Q. So they wouldn't have been able to report
19 that; right?

20 A. I was outside over there by that little
21 porch, and you know what I mean, that room. That's
22 it. There wasn't nobody there.

23 Q. Did you go outside on the balcony and talk
24 to yourself at all?

25 A. Out there, yeah, a little. Not aloud, but

1 in my mind, you know; just about what we were
2 talking about here.

3 Q. Were you talking aloud to yourself?

4 A. No, not aloud, no.

5 Q. Just in your mind; is that right?

6 A. Just, you know, reviewing all of the
7 trickery you're trying to use.

8 Q. Do you believe that Maria ever used
9 trickery?

10 A. I don't know her that well. I can't say.
11 I can't talk to Maria. You ask her. She's right
12 there.

13 Q. You're talking for me, aren't you?

14 A. No, I'm not talking for you.

15 Q. Do you know if Nancy ever used trickery?

16 A. What's that? I don't --

17 Q. Do you know who Nancy is?

18 A. You'd have to ask her, too. I don't --

19 Q. What about -- do you know who Bryan is?

20 A. I know who Bryan is, more or less. I seen
21 him, yeah. I don't know that person, but I seen
22 him, yeah.

23 Q. But you know who he is? You would
24 recognize him, wouldn't you?

25 A. Yeah, he's right there. He's the one

1 walking me in and out of here.

2 Q. Have you ever talked to Bryan about this
3 case?

4 A. A little, yeah. Not about the case, but
5 about, you know -- about going back and forth.

6 Q. Did you ever ask --

7 A. It gets boring, you know. It gets tired.

8 Q. Did you ever ask Nancy to write a letter
9 to the parole board about your circumstances and
10 situation?

11 A. I don't remember if I asked or didn't ask,
12 but I can't remember that.

13 Q. So you can't remember asking her to write
14 to the parole board about your situation; is that
15 your testimony?

16 A. I can't remember about a lot of things,
17 you know, that --

18 Q. I noticed. What I'm asking you is: Did
19 you remember that. Is the answer no?

20 A. The answer is: I can't remember.

21 Q. Do you remember in 2011 going to medical
22 staff, reporting that you're suicidal?

23 MS. ARMIJO: Objection, hearsay.

24 THE COURT: Overruled.

25

1 BY MR. SINDEL:

2 Q. Reporting that you felt suicidal?

3 A. I don't remember.

4 Q. Do you remember telling the staff that you
5 only said that --

6 MS. ARMIJO: Objection, hearsay.

7 THE COURT: Overruled.

8 BY MR. SINDEL:

9 Q. Do you remember telling the staff that you
10 only said that so you could get attention for your
11 housing problem?

12 A. I don't remember that.

13 MR. SINDEL: Your Honor, may I approach?

14 THE COURT: You may.

15 BY MR. SINDEL:

16 Q. Bates 62702.

17 Do you remember those Bates numbers?
18 Mr. Burke talked to you about those.

19 A. No, I don't remember Bates numbers.

20 Q. You have to speak into the microphone,
21 sir.

22 A. I don't remember Bates numbers or whatever
23 kind of numbers.

24 Q. Do you see a number there?

25 A. I see something. I see a number, yeah.

1 Q. Can you read this, what it says here?

2 A. I don't see my signature.

3 MR. SINDEL: He said he didn't see his
4 signature.

5 Q. There at the bottom, does it indicate who
6 this record refers to?

7 A. I said somebody looks like they wrote my
8 name there. That's not my writing. I don't write
9 that good.

10 Q. You don't write that good. Does it say in
11 there next to your name "NMCD" and a number sign?

12 A. Yeah, prison number. But there is no
13 signature on there.

14 Q. I didn't say that, did I? Are you trying
15 to manipulate me?

16 A. Yeah. (Laughs).

17 Q. Is there anything there under NMCD of a
18 Number 26396?

19 A. I see it, but --

20 Q. Is that your inmate number?

21 A. Yeah. What does it mean?

22 Q. All right. So then does it say anything
23 here? Up here, does this refresh your memory about
24 having provided medical false information because
25 you wanted to resolve your housing issues?

1 A. But who --

2 MS. ARMIJO: Your Honor, objection, calls
3 for --

4 THE COURT: Overruled.

5 A. Again, there is no signature.

6 BY MR. SINDEL:

7 Q. I didn't say that.

8 A. Anybody could have wrote something like
9 that. I mean, you know, those documentations, to
10 me -- they don't look legal.

11 Q. I'm not asking you about whether your
12 signature appears on this; right? I'm asking you --

13 A. Yeah.

14 Q. -- in as straightforward a fashion as I
15 can whether that document indicates that you told
16 them you were providing them false information
17 because you wanted to resolve your housing issues.

18 A. I don't think that -- I don't think I ever
19 said that. I don't think I ever said that.

20 Q. So whatever -- that doesn't refresh your
21 memory; is that right?

22 A. It doesn't refresh my memory. I've never
23 seen that documentation, either.

24 Q. I'm asking you --

25 A. But no.

1 Q. So it doesn't refresh your memory that you
2 told them that to get attention for your housing
3 problems?

4 A. No, I never seen that document before.

5 Q. Unfortunately, that doesn't answer my
6 question.

7 A. Okay.

8 Q. I realize that you said ten times that you
9 haven't seen this document. What I want to know is
10 what is in this document, does it refresh your
11 memory about whether you provided false information
12 in order to resolve an issue you had with your
13 housing?

14 A. No, because I never did make a statement
15 like that.

16 Q. Okay. Did you ever, on March 2, 2010,
17 inmate Number 26396, tell medical staff that you had
18 had multiple suicide attempts?

19 A. I don't remember that, either.

20 Q. Do you remember telling them that you'd
21 had severe cerebral trauma, which is blows to the
22 head?

23 A. Where is that? In 2000-what?

24 Q. 2010.

25 A. That's seven years ago.

1 Q. Nine years after the event you've
2 testified to.

3 A. Nine years ago, or more. I don't even
4 remember.

5 Q. Do you remember telling them that you have
6 received in the past psychotropic medication?

7 A. I don't think I ever told them that. Who
8 did I tell? Who are you implying to?

9 Q. Ashley Roethe, R-O-E-T-H-E, is the person
10 who signed that.

11 A. I don't even know that person.

12 Q. You don't even know that person?

13 A. No.

14 Q. Is there a line here that says
15 "clinician's signature"?

16 A. Yeah, it looks like it appears to be a
17 line.

18 Q. And someone signed that, although you
19 can't read the signature; right?

20 A. That don't appear to be my signature. I
21 don't sign like that. My signature is different.

22 Q. Did you tell the clinician that you had
23 had prior inpatient psychiatric hospitalizations?

24 A. No, I had told them -- I don't remember
25 telling them none of that.

1 Q. Were you ever --

2 A. Are you talking about -- did I ever what?
3 I didn't get the question.

4 Q. I'm asking if you ever told the clinician,
5 which would probably be the doctor, whether you ever
6 had inpatient psychiatric hospitalization.

7 A. I've had inpatient a lot of times with
8 different issues. But like I said, what does this
9 have to do with medical?

10 Q. What it has to do with -- I'm sorry?

11 A. Medical.

12 Q. Medical?

13 A. Yeah.

14 Q. I would think that perhaps if you had
15 psychiatric hospitalization, that might be
16 classified as medical.

17 A. No, I'm talking about what about this that
18 I'm here for has to do with medical.

19 Q. Well, I can't answer your questions. I
20 just simply am supposed to ask questions.

21 A. Oh, yeah.

22 Q. Okay?

23 A. Yeah.

24 Q. If you want to talk to me yourself
25 outside, I can maybe answer some of those questions.

1 Now, were you ever part of a psychiatric
2 clinic there at the institution, at the penal
3 institution, at the prison?

4 A. When? Now that I come out?

5 Q. No, not now. You're not in prison now,
6 are you?

7 A. No, I mean in '17?

8 Q. In 2010.

9 A. 2010? I think they --

10 MS. ARMIJO: I'm going to object. He's
11 showing him an object.

12 A. I don't remember.

13 MS. ARMIJO: And --

14 MR. SINDEL: I won't show it to him.

15 MS. ARMIJO: -- impeach him, or if he
16 wants to ask questions.

17 BY MR. SINDEL:

18 Q. Do you remember --

19 THE COURT: I think he can show him an
20 object, whatever he's showing him. Overruled.

21 Q. Do you remember telling them -- or were
22 you at that time part of the psychiatric clinic?

23 A. I don't remember none of that.

24 Q. Were you ever diagnosed as suffering from
25 psychosis?

1 A. I don't remember being diagnosed.

2 MS. ARMIJO: Objection, hearsay.

3 THE COURT: Sustained.

4 BY MR. SINDEL:

5 Q. Did you ever tell anyone at the
6 psychiatric clinic that you were going to sue them
7 in order to get the requested prescriptions you
8 wanted?

9 A. I can't remember that, either.

10 Q. That would have been as late as 2016.

11 A. I can't recall nothing like that.

12 Q. Would it refresh your memory to see the
13 medical records concerning that request or
14 reference?

15 A. I don't think it would refresh my memory,
16 because I don't think I ever said nothing like that.

17 Q. So nothing that is in this record would
18 refresh your recollection as to what you told them
19 at 10:55 in the morning on September 26, 2016?

20 A. Again?

21 Q. Nothing in this record would refresh your
22 memory as to what you told them on -- at 10:55 in
23 the morning on September 26, 2016?

24 A. Where was I on September 26, 2016?

25 Q. Do you see on the left-hand side at the

1 top there is a date?

2 A. Yeah.

3 Q. 9/26/16. Is that what it says?

4 A. Where was I?

5 Q. I didn't ask you if you signed it. Is
6 that what it says, sir?

7 A. Is that 2016?

8 Q. Yeah.

9 A. 2016?

10 Q. Yeah. That's what it says.

11 A. I can't -- I don't see no 2016. Where do
12 you see a 2016 on there?

13 Q. Okay. 9/26/16.

14 A. '16, yeah.

15 Q. Right.

16 A. Yeah.

17 Q. That's not 1916, is it?

18 A. No, it's 2016. Why are you asking that?

19 Q. I'm asking you whether it indicates in
20 there that you had said you were going to sue them
21 if you didn't receive your medication.

22 A. No, I never did say nothing like that.

23 Q. Did you ever receive any mental health
24 medication?

25 A. What?

1 Q. Did you ever receive any mental health
2 medication?

3 A. Not that I can remember.

4 Q. Did you ever make any kind of request of
5 the doctors or the medical staff for any mental
6 health medication?

7 A. I might have. I don't know. I can't
8 remember.

9 MR. SINDEL: I'm sorry, 62816.

10 Q. Do you recognize that handwriting, sir?

11 A. Yeah.

12 Q. Is that your handwriting?

13 A. Yeah.

14 Q. And does that have printed there your
15 name, Lawrence Torres?

16 A. Yeah.

17 Q. And your inmate number, 26396?

18 A. That I'm having trouble sleeping, yeah.

19 Q. Yeah, did it say, "I need to get" -- and
20 this is your handwriting, isn't it?

21 A. Yeah, I told you that -- I did -- I told
22 you.

23 Q. Okay. I want to see what you're going to
24 tell me now.

25 A. That I did, that I did that day, yeah,

1 that I told them that.

2 Q. On that day?

3 A. Yeah, that I was having problems sleeping.
4 I didn't have no -- you've got to tell mental
5 health. You can't tell the other people that you're
6 having problems sleeping. You've got to go to the
7 proper, adequate staff.

8 Q. You have to make something up.

9 A. No, you have to write -- to make either
10 the psych department or the medical department, one
11 of the two.

12 Q. It says in there, in your handwriting, on
13 September 18, 2016 -- is that the date in this
14 little letter, or kite, or whatever it is?

15 A. It's not a kite. It's handwritten.

16 Q. "I need to get my mental health M-E-D."
17 Right?

18 A. Mental health, yeah. I did that around,
19 you know -- I did a lot of mistakes before writing.
20 But what was happening here is that I couldn't
21 sleep. And I had asked them if they could help me
22 out with sleeping medication.

23 Q. And that was all for sleeping?

24 A. Yeah, for sleeping.

25 Q. Don't you say, "I cannot sleep and I'm

1 having much problems in my mind"?

2 A. No, I just asked them if they could help
3 me, and they told me no. They ran me out, and they
4 wrote all kinds of stuff probably.

5 Q. Is that your handwriting or theirs?

6 A. That's my writing, yeah.

7 Q. So that's what you said, isn't it?

8 A. That's right.

9 Q. "I'm having much problems in my mind";
10 right?

11 A. Yeah, but that -- I didn't -- I wasn't
12 having problems in my mind. I wasn't sleeping.
13 That's what I meant.

14 Q. Oh. Well, then, when you put in the words
15 "I'm having much problems in my mind," was that the
16 truth or was that not the truth?

17 A. It was the truth. You know, my head
18 wasn't letting me sleep.

19 Q. Because you were having problems --

20 A. Sleeping, yeah.

21 Q. -- "in my mind"?

22 A. Sleeping.

23 Q. "In my mind"? That is your words.

24 A. Sleeping.

25 Q. Is that your words?

1 A. Sleeping, yeah.

2 Q. Is that your words?

3 A. "Sleeping" is also my words.

4 Q. What about "in my mind"?

5 A. What about "sleeping"?

6 Q. I'm not asking you that.

7 A. Oh, okay. Well, it's in there, too.

8 Q. It's both, isn't it?

9 A. Yeah, I already explained to you what "in
10 my mind" meant to me, and now I'm telling you what
11 it means to me.

12 Q. Do you know what an auditory hallucination
13 is?

14 A. No. Do you?

15 Q. Yeah, I do. Do you know what it means to
16 hear things that no one else can hear?

17 A. No.

18 Q. Do you know what it means to hear voices
19 when there is no one around talking?

20 A. No.

21 Q. Did you ever tell them, the medical staff,
22 that you were occasionally hearing voices?

23 A. No, that wasn't me. I didn't tell them
24 that.

25 MR. SINDEL: 62822.

1 A. Yeah. They would put all kinds of stuff
2 there, them medical people. If you look at my
3 file -- you're going through my medical file, you
4 want to go in there, that doesn't have nothing to do
5 with it, you know.

6 Q. Those medical people -- they can be awful
7 tricky, can't they?

8 A. The medical people, they're --

9 Q. Just kept adding stuff in?

10 A. No, they're just there to do their job,
11 but I mean, to me, they didn't -- you know, I didn't
12 need them, because I had no -- I had no kind of
13 mental health issue. I had medical issues.

14 Q. Okay. I understand that. I'm going to
15 show you what's an entry on March 4, 2011, and right
16 there at the top, does it indicate that "The inmate
17 also alleged," and then it goes on to say a number
18 of things you alleged; right?

19 A. I don't know what.

20 Q. Does it say that, sir?

21 A. I don't know what it says. There's a lot
22 of writing right there. I can't read all of that.

23 Q. I'm asking you about three words at the
24 beginning.

25 A. I can't see that.

1 Q. You've got the glasses in your hands?

2 A. I've got to turn the paper a little this
3 way. I can't read that writing. You read it.

4 Q. It says, "I am also alleged" -- and then
5 it goes on to say that the CO spoke sarcastically
6 and other things. Okay? I just want to get that
7 first sentence in there. Okay? Can you see that?

8 A. Why do you want to get that first sentence
9 in there?

10 Q. Because later on it says that you reported
11 occasionally hearing voices.

12 A. No, no. That's a lie right there.

13 Q. That's a lie. Those guys. Does it say
14 that you reported occasionally hearing voices?

15 A. Where is the verification on that that I
16 hear voices? Is there any documentation that's
17 legal?

18 Q. In other words, that would be one of the
19 reasons you might sue them, if they didn't have
20 enough documentation; right?

21 A. Right now I'm asking you, why is there
22 no -- you know --

23 Q. Is that your inmate number?

24 A. Yeah, but --

25 Q. Just wait. You have to wait. Inmate

1 Number 26396?

2 A. That's my number.

3 Q. All right. And is there a date of March
4 4, 2011?

5 A. There is a date, 2011, yeah.

6 Q. I'm asking you if you remember on January
7 25, 2007, telling Patrick Kowalski, a licensed
8 medical social worker, that you were still reporting
9 hallucinations?

10 MS. ARMIJO: Can we have a Bates stamp
11 number?

12 MR. SINDEL: I'm sorry, 62853.

13 A. I can't remember.

14 BY MR. SINDEL:

15 Q. You can't remember?

16 A. No.

17 Q. Did you tell medical staff on January 4,
18 2007, that you had several parole violations, but it
19 was the legal system's fault?

20 MR. SINDEL: 62854.

21 MS. ARMIJO: Your Honor, that's not a
22 statement made for medical purposes. It's hearsay.

23 THE COURT: Well, I'm going to construe it
24 broadly. He's talking to medical personnel.

25 Overruled.

1 MS. ARMIJO: And can we have a Bates,
2 please?

3 MR. SINDEL: 62854.

4 BY MR. SINDEL:

5 Q. Did you remember telling them that?

6 THE COURT: What was your answer,
7 Mr. Torres?

8 A. I cannot remember.

9 Q. You cannot remember. Okay.
10 Do you also occasionally go by the name of
11 Lorenzo?

12 A. More likely Lawrence. And Lorenzo is
13 Spanish for Lawrence, you know, if you're bilingual.
14 You spell Lawrence in Spanish, Lorenzo,
15 L-O-R-E-N-Z-O. So I don't go by that name. That is
16 my name, my real name.

17 Q. I'm sorry. Do you prefer Lawrence or
18 Lorenzo?

19 A. It don't matter. In school they called me
20 Lawrence, and in the prison they called me Lorenzo.
21 So it don't really matter.

22 Q. Do you remember telling the medical staff
23 at the New Mexico Department of Corrections on
24 February 3, 2012, that you were still hearing
25 voices?

1 A. No, I don't remember.

2 Q. Did you tell them that?

3 MS. ARMIJO: Bates stamp?

4 A. I don't remember.

5 THE COURT: Hold on.

6 MS. ARMIJO: May we please have a Bates
7 stamp?

8 MR. SINDEL: 62929.

9 BY MR. SINDEL:

10 Q. You said yesterday that you woke up the
11 morning of March 26, 2001, and the first thing on
12 your mind was whether you could get heroin; right?

13 A. When was that? The year? What?

14 Q. 2001.

15 A. The first thing that was on my mind was to
16 go get me a cup of coffee, and then I said --

17 Q. And then get heroin?

18 A. -- that I was looking upstairs. That's
19 the reason I was looking upstairs. That's how I saw
20 what I saw.

21 Q. I'm asking you, sir, did you testify
22 yesterday that you were looking to see if you could
23 score some heroin?

24 A. At that time, yeah, at that time in
25 2006 -- 2001.

1 Q. That's in the morning; right?

2 A. In the morning, yeah, after I got out and
3 heated my water, and all of that, and I was looking
4 around everywhere, no? That's how I saw --

5 Q. Did you tell Nancy on March 10th -- I'm
6 sorry, March 7th, 2017, that you were looking to get
7 a fix?

8 A. I don't remember what I told Nancy that
9 time.

10 Q. You said -- I think you said a thousand
11 million pages of documents at your house. Is that
12 accurately quoting what you said earlier?

13 A. Yeah, I've got a lot of documentation.

14 Q. Do you have any of the documentation from
15 the various statements that you have made to people
16 at the department --

17 A. No, I have no --

18 Q. You have to let me finish, sir. Okay?

19 A. Yeah.

20 Q. You told me you could do that. All right?
21 You have to say yes or not.

22 A. No, I had statements in my house about my
23 hospice and different other things that I'm going --
24 you know, that -- my parole things and things like
25 that, no, that concern me. Doesn't concern you or

1 the Court or, you know.

2 Q. Well, I'm afraid we'll make that decision.
3 But right at this point in time, it's a pretty
4 simple question, I think. Did you tell Nancy on
5 March 7, 2007, that you woke up and recalled wanting
6 a fix?

7 A. Is that what it says in the statement?

8 Q. Hold on. 43599. Here we go. Do you see
9 a date up there, March 7, 2017?

10 A. Yeah.

11 Q. Special Agent Nancy Stemo. Do you see
12 that there? You have to say yes or no.

13 A. Yes. Where is the part where you're
14 talking about?

15 Q. We'll get to it. All right? Don't be
16 impatient.

17 A. No, I'm not impatient.

18 Q. Does this refresh your memory as to
19 whether you told her you woke up recalling you
20 wanted a fix?

21 A. I didn't wake up like that. On that
22 morning?

23 Q. Yeah, March 26, 2001. That's what you've
24 been testifying to.

25 A. Yeah.

1 Q. Right?

2 A. Right. But upstairs, after I got -- after
3 I went to get the water and all of that, that's when
4 I started looking around. That's where I seen what
5 I seen and I heard what I heard.

6 Q. Okay. Listen to me for a second.

7 A. That's it. I said, yeah.

8 Q. Did you tell her --

9 A. I said yeah.

10 Q. -- that you woke up and you wanted a fix;
11 right?

12 A. I said I told her --

13 Q. That you wanted a fix. And a fix means
14 you wanted a dose of heroin; right?

15 A. Right.

16 Q. And you are a regular -- you were a
17 regular heroin user, weren't you?

18 A. That's correct.

19 Q. And if you use heroin on a regular basis,
20 no matter how you get it, you usually want to try to
21 get it daily, every day?

22 A. Every day, yeah.

23 Q. Maybe a couple of times a day; right?

24 A. Right.

25 Q. Because if you don't get your heroin, you

1 start to feel sick?

2 A. Right.

3 Q. And so you take the heroin for two
4 reasons. The first is so you don't feel sick in the
5 morning; right?

6 A. Right.

7 Q. And the second is because it sort of takes
8 you away from the environment, you get high, and
9 feel better.

10 A. That's right, yeah. More or less, yeah.

11 Q. So it kind of lessens the effects of being
12 locked up in prison. Fair to say?

13 A. Yeah, sort of. Yeah, I would say.

14 Q. And if I understand your testimony from
15 yesterday, you had gone in front of the parole board
16 and been paroled on your sentence of 50 years;
17 right?

18 A. Right.

19 Q. And that 50 years was what they call
20 aggravated robbery; right?

21 A. Armed robbery of a car. It's an
22 indetermined sentencing law that I'm under.

23 Q. I'm sorry. I couldn't understand the
24 last --

25 A. It's an indetermined sentencing law that

1 I'm under. It's not --

2 Q. Fifty to 150 years?

3 A. Yes. It's an indetermined sentencing law.

4 That's the name of the law.

5 Q. A chunk of time; right? That's a lot of
6 time.

7 A. A lot of time. But the time that it is is
8 very unconstitutional, very prejudice at this day
9 and age, over a lot of people.

10 Q. Well, I'm not so much interested in your
11 legal arguments.

12 A. I know.

13 Q. I'm just trying to get the facts. Okay?
14 So you got a 50-year sentence.

15 A. Yeah.

16 Q. And you would go in front of a parole
17 board about getting out; right?

18 A. Right.

19 Q. And I think that Nancy said you had even
20 requested a letter from --

21 MS. ARMIJO: Objection, hearsay.

22 Q. I'll rephrase it. Did you request a
23 letter of recommendation from SA -- that means
24 Special Agent -- Stemo, for the parole board?

25 MS. ARMIJO: Can we get a page number?

1 MR. SINDEL: 48355.

2 BY MR. SINDEL:

3 Q. Did you request that?

4 A. I already told you the answer to that. I
5 assume that I told you that I did not recall whether
6 I asked or I didn't ask her. I don't recall. I
7 think I told you earlier.

8 Q. Well, certainly you would want to have a
9 positive recommendation from someone in law
10 enforcement to the parole board so you could get out
11 of prison; right? You don't like to be there?

12 A. Yeah, but I won't like to have my whole
13 family killed either, or me.

14 Q. I didn't ask you that, now, did I, sir?

15 A. No.

16 Q. So just please answer my questions. Okay?
17 Did you want out of prison?

18 A. Did I want out of prison?

19 Q. Yeah.

20 A. Everybody wants out of prison.

21 Q. All right. Did you?

22 A. Huh?

23 Q. Never mind.

24 A. Everybody wants out.

25 Q. That's all right. Now, so you can't

1 remember asking Special Agent Stemo to write this
2 letter to the parole board?

3 A. I cannot recall. That's what I told you.

4 Q. Now, when you go in front of the parole
5 board, they want to know what your plans are; right?

6 A. I don't know. I guess you were there.

7 Q. You were there, weren't you? You had a
8 meeting with them.

9 A. How do you know what always happens?

10 Q. What?

11 A. How do you know it always happens?

12 Q. Well, I'm assuming that if you ever got
13 paroled, which you apparently did, because you
14 violated it a number of times --

15 A. Yeah.

16 Q. -- you had to go in front of the parole
17 board; right?

18 A. But I went after I did a year and a half.

19 Q. So you would go in front of the parole
20 board and you say, "Look, Mr. Parole Member, I'm not
21 a drug addict"; right? You didn't tell them you
22 were shooting up heroin a couple of times a day, did
23 you?

24 A. I told them that I needed help, and that
25 they needed to help me with certain resources, and

1 that my family were willing to help me, and you
2 know, like that. That's the way I went about it.

3 Q. But did you tell them that every day, a
4 couple of times a day, you were violating prison
5 policy by securing and shooting heroin?

6 A. I wasn't -- I wasn't -- that was in 2000.
7 That was way back in 2005 or '06 you're talking
8 about -- I mean 2001.

9 Q. If according to the medical records --

10 A. 2001, you're talking about; right?

11 Q. Didn't you start shooting heroin in --
12 when you were 17 years old?

13 A. Yeah, but you're talking about --

14 Q. You've answered my question.

15 A. What area are you talking about?

16 Q. You've answered the question, sir. There
17 is no question in front of you.

18 Did you tell the parole board, "Look, as
19 soon as I get out, I'm going to start dealing drugs
20 again"?

21 A. I can't really understand what you're
22 saying, because you're saying so many things at too
23 many times.

24 Q. Did you tell the parole board that, "Hey,
25 if you let me out, I'm going to start dealing heroin

1 again"?

2 A. I didn't say that.

3 Q. Yeah, that would be pretty stupid. You're
4 not going to get out on parole, are you, if you tell
5 them that you're going to violate the law?

6 A. I'm not a parole board member, but I can't
7 be thinking in other people's brains.

8 Q. But you did, in fact -- when you got out
9 on parole, you went out and you trafficked in
10 heroin, didn't you?

11 A. What?

12 Q. When you got out on parole, after
13 receiving a 50-year indeterminate sentence, did you
14 continue to traffic in heroin? Do you know what I
15 mean by that?

16 A. I probably did. I don't know. I can't
17 remember that far back. You're talking about
18 different times, different years. You're talking
19 all the way from 2077 (sic) --

20 Q. I'm not talking about 2077.

21 A. -- 1977, when they sentenced me, all the
22 way to now.

23 Q. I'm trying to get straight to this point.
24 You told Maria that, in fact, you had been convicted
25 after you got out on parole for distributing or

1 conspiracy to distribute heroin; right?

2 A. Yes, I told her. I pled guilty, yeah.

3 Q. So every time that you got out on parole,
4 you went straight to committing other criminal acts;
5 right?

6 A. No, no.

7 Q. Okay. Let me ask you. Looking around the
8 courtroom, do you see Angel DeLeon?

9 A. No.

10 Q. He's not here?

11 A. I don't see him.

12 Q. That morning when you saw Mr. Gallegos,
13 was he wearing a kitchen white uniform?

14 A. I don't remember what kind of uniform he
15 was in.

16 Q. Do you remember whether or not
17 Mr. Gallegos worked in the kitchen as part of his
18 work detail?

19 A. I don't remember, really, where he worked.

20 Q. Do you remember, did you see Mr. Castillo
21 the night before, on March 25, 2001?

22 A. I think I did see him. I don't know. I'm
23 not sure.

24 Q. Do you remember where you saw him, or what
25 he was doing, or anything at all about it?

1 A. If I did see him, it was probably upstairs
2 in his cell or around his cell, right in that area
3 where I showed you earlier.

4 Q. Do you remember -- do you recall going
5 into his cell the night before, on March 25, 2001?

6 A. Well, I guess everybody went into their
7 cell, apparently, because they was counting.

8 Q. That's not what I asked you, sir.

9 A. Did I see him?

10 Q. Did you go into his cell on March 25,
11 2001?

12 A. Oh, that day? No, I didn't go in his
13 cell, but I seen through the window. I looked.

14 Q. You saw him in the cell through the
15 window?

16 A. I went to look to see if what DeLeon had
17 told me was the truth.

18 Q. I'm asking you about March 25. This is on
19 March 25 when you looked in the cell?

20 A. March the what?

21 Q. 25.

22 A. Of what year?

23 Q. 2001.

24 A. Okay, what -- now, on the month and the
25 date, I'm getting very confused with your month and

1 your date, because it's, like, 17 years back. But
2 on the year, 2001, yeah.

3 Q. Do you recall looking and seeing
4 Mr. Castellano in his cell on March 25, 2001?

5 A. I remember passing through there and
6 seeing him under some -- like a sheet, what appeared
7 to be like a sheet covering him up.

8 Q. On March 25; right?

9 A. On the date that he was murdered.

10 Q. If that was March 25, that would have been
11 the day you saw him; right?

12 A. I did -- that day that I seen him was --

13 MS. ARMIJO: Objection.

14 THE COURT: Hold on. Overruled.

15 A. -- when I passed through the pod, just
16 looking around to see if DeLeon had told me in the
17 chow hall the truth about what had happened. So I
18 went to be nosy, and I was nosing around there. And
19 I seen -- that's when I seen what I seen. I seen
20 him covered up in a sheet.

21 BY MR. SINDEL:

22 Q. All right. I asked a question.

23 THE COURT: Hold on. Did the court
24 reporter get my ruling? I overruled the objection.

25 All right, Mr. Sindel.

1 Q. Was he on his stomach, or was he on his
2 back?

3 A. I don't recall what he was on. All I was
4 looking for --

5 Q. You've answered the question, sir.

6 A. Answer the question? Why should I answer
7 the question if I can't recall? I can't remember if
8 he was on his back, his side --

9 MR. SINDEL: Objection, Your Honor,
10 nonresponsive.

11 THE COURT: Mr. Torres --

12 THE WITNESS: Yeah.

13 THE COURT: -- you're going to have to
14 listen to the question. Let Mr. Sindel complete his
15 question before you start answering. We're not
16 getting a good transcription here.

17 THE WITNESS: You gotta give --

18 THE COURT: Mr. Torres, I'm talking right
19 now. You listen to me. Okay?

20 THE WITNESS: Okay.

21 THE COURT: You listen to Mr. Sindel's
22 question and you don't start talking until he's done
23 with his question. And you answer his question, and
24 that's all you do right now. If Ms. Armijo wants to
25 bring out further testimony, she will ask you for

1 that. But all you do at this point is answer
2 Mr. Sindel's question. Do you understand?

3 All right. Mr. Sindel.

4 BY MR. SINDEL:

5 Q. Now, do you remember when Ms. Armijo asked
6 you whether or not on March 26, 2001, you looked
7 into Mr. Castillo's cell and you said no; correct?

8 A. I didn't go into Castillo's cell, no.

9 Q. Okay. You didn't look in his cell on
10 March 26?

11 A. I looked in his cell, but I didn't go in
12 his cell.

13 Q. I'm asking you: Did you say to Ms. Armijo
14 yesterday that you did not look into his cell on
15 March 26, 2001?

16 A. I think I told her that I did -- I did
17 look into the cell or -- or she didn't ask me. I
18 don't remember that good.

19 Q. When you were taken by the authorities
20 into -- out of the housing unit there, you were
21 taken to the chapel or some general area; is that
22 right? All of you?

23 A. Out in the yard for a long time on our
24 knees in the dirt, handcuffed. And then, from
25 there, went to lunch about 2:00 or 3:00, somewhere

1 around that time, maybe later. And then, from
2 there, they took us to the chapel. We stayed there
3 for a long time in the chapel.

4 Q. All right. And while you were there, did
5 they ask you questions?

6 A. Who asked who? Who is "they"?

7 Q. Fair enough. Were you ever questioned
8 about anything that you now claim you saw on March
9 26, 2001?

10 A. Repeat that. Repeat that again.

11 Q. Were you asked by any law enforcement
12 officers, institutional officers, STIU, or anyone
13 else any questions about what you now claim you saw
14 on March 26, 2001?

15 A. Yeah, I think they did like at that time.

16 Q. Did you tell them what you have told this
17 jury you saw on that day at that time?

18 A. I told them different because I was mad at
19 them because they hadn't fed me and they had me out
20 there in the sun all day, and I hadn't done nothing.

21 Q. All right. Would it be fair to say, then,
22 you did not tell them what you had told this jury?

23 A. I did not tell --

24 Q. Please, sir. She's got to get it down and
25 we've got to go through it. So you did not tell

1 them what you told this jury you claim to have seen
2 on the morning of March 26, 2001, because you were
3 mad; is that right?

4 A. I was mad at the -- at the correctional
5 department, yeah.

6 Q. Because they let you sit outside too long.
7 Now, did anyone make any request of you to allow you
8 to have your DNA swab from your mouth?

9 A. Yeah, that was -- that was something
10 different about -- that was concerning my parole and
11 all that.

12 Q. Did they ask you on that day, on March 26,
13 2001, whether you would contribute any DNA?

14 A. I think they did ask me, and I told them I
15 was pissed off at them, and that I wasn't going to
16 give nothing, I wasn't going to tell them nothing,
17 because I was very upset at them, the way they're
18 conducting themselves.

19 Q. So you made it clear to them that you
20 weren't going to cooperate in any way; right?

21 A. Not with them, yeah, at that time.

22 Q. The picture that you saw, Government's
23 Exhibit 181 of Mr. Gallegos, that had his name on
24 it, didn't it?

25 A. On 181? It had whose name?

1 Q. Joe Gallegos' name. Do you remember that?

2 A. I don't remember that, no.

3 Q. Can we pull up Exhibit 181?

4 Do you remember when Maria asked you
5 questions and you were answering all of her
6 questions, she showed you this photograph; right?

7 A. You know what? I really can't remember if
8 she showed it to me or not. But I think --

9 Q. That was a long time ago.

10 A. I think she did.

11 Q. And you can see the name Joe Gallegos
12 right there, can't you, if you look right next to
13 you?

14 A. Yeah, on the top, you're talking about? I
15 could see the name, yeah.

16 Q. Look next to you, sir. Right next to you.
17 To your left.

18 A. Yeah, I could see it.

19 Q. Do you see his name, Joe Gallegos?

20 A. Yes, sir.

21 Q. It's not very hard to pick him out when
22 his name is right there under his chin, is it?

23 A. Right.

24 Q. Okay. You can take that down.

25 Mr. Burke was the first gentleman who

1 talked to you. He's the gentleman, the nice,
2 slender guy that came up and talked to you and stood
3 next to you. You told him you didn't have to answer
4 because it was all hearsay; right?

5 A. I don't remember.

6 Q. You don't remember saying that?

7 A. I don't remember seeing him.

8 Q. Do you know what hearsay is?

9 A. Hearsay? I guess it's like something
10 that's not valid.

11 Q. Okay. Now, you also did -- while you were
12 out there in the chapel, or outside, and getting
13 madder and madder, did they ask you to take off your
14 clothes?

15 A. Oh, the department?

16 Q. I'm sorry, the Department of Corrections
17 institutional individuals.

18 A. I can't remember if they did or didn't.
19 That's a long, 17 --

20 Q. It is a long time ago. And do you
21 remember whether or not they examined any part of
22 your body, your hands, your knees, your chest, any
23 part of your body at all while you were out there
24 waiting in the hot sun?

25 A. What happened? What did you say?

1 Q. Do you remember if they examined you or
2 anyone else for wounds or bruises or cuts?

3 A. I don't remember. I remember them taking
4 people to medical. I think they took me also and
5 they did take pictures and stuff like that.

6 Q. They looked at you, and they took pictures
7 of things they may have seen; right?

8 A. No, they didn't take pictures of me,
9 because I didn't have no scratches on me or nothing,
10 but they took pictures of other people.

11 Q. Were you there when they took pictures?
12 Could you see them take pictures?

13 A. What's that, again?

14 Q. Were you there when they took pictures of
15 anyone?

16 A. No, I wasn't in the chapel, but I could
17 see them calling them out. They were calling them
18 out, you know.

19 Q. So if anybody had injuries, at least, they
20 could be examined and pictures taken, as far as you
21 knew; right?

22 A. Well, they were taking them out to medical
23 and checking them. That I do know. They were
24 checking their hands, they were checking their
25 fingernails, and they were checking their knees.

1 Q. They checked your hands?

2 A. They checked everything.

3 Q. They checked everybody's hands?

4 A. Yeah. And pee, and everything else.

5 Q. Now, there were some questions that
6 Mr. Burke -- slender, handsome devil -- asked you
7 about your interview July 22, 2003, beginning at
8 around 2:22 p.m.; right?

9 A. Where was that at?

10 Q. July 22, 2003.

11 A. Where at, though?

12 Q. At the institution. You were being
13 examined or questioned by a Mr. Lawrence Jaramillo.

14 A. Oh, that was -- yeah, that was --

15 Q. That was the guy you said was illiterate.

16 A. No, Sprunk -- yeah, Sprunk. He's the one
17 that's -- because he got -- he got thrown out of the
18 Department of Corrections, and Jaramillo got thrown
19 out also.

20 Q. The whole organization was corrupted. Do
21 you remember if Captain Steve Saavedra was there?

22 A. Yeah, he was.

23 Q. And Dwayne Santistevan?

24 A. Yeah, he was STIU.

25 Q. And Mike Sprunk?

1 A. Yeah, that's the one. Sprunk is the one
2 that --

3 Q. Oh, yeah. And they were all there, and
4 you were at the Valencia County District Attorney's
5 Office; right?

6 A. Right.

7 Q. And they recorded your conversation;
8 right?

9 A. I don't recall. I don't know if they did
10 or didn't.

11 Q. Well, that was back in 2003. That was
12 only three years, basically, or two years after this
13 incident, right? Not 17.

14 A. Yeah. After, yeah. Yeah.

15 Q. And did you tell them at that time that
16 the doors --

17 MS. ARMIJO: Objection, hearsay.

18 MR. SINDAL: Well, it's impeaching, Your
19 Honor.

20 THE COURT: Well, I better -- y'all better
21 approach. I'm not sure I know what he's going to
22 say.

23 (The following proceedings were held at
24 the bench.)

25 THE COURT: What statement are you trying

1 to impeach?

2 MR. SINDEL: There is a statement as to --
3 he said on the direct examination about when it was
4 he woke up, and when it was they opened the doors,
5 and he says in his statement they opened the doors
6 at 6:30 a.m.

7 MS. ARMIJO: Do you have a Bates of that?

8 MR. SINDEL: Um-hum. You have it there.
9 It's not --

10 MS. ARMIJO: I know, but a lot of Bates --

11 MR. SINDEL: It's the first, or about the
12 second page. I didn't bring it up here.

13 THE COURT: Well, I didn't pick up his
14 direct statement. If you're impeaching his
15 testimony with Ms. Armijo, I'll allow that.

16 MR. SINDEL: You highlighted that.

17 THE COURT: I'll allow the question, then.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: All right, Mr. Sindel.

21 MR. SINDEL: Thank you, Your Honor.

22 BY MR. SINDEL:

23 Q. Do you remember saying at that time that
24 the doors opened at 6:30 a.m.?

25 A. What day are you talking about?

1 Q. March 26, 2001.

2 A. It opened 5:30, 6:00 or 6:30. I can't
3 remember exactly -- what exactly time or minutes and
4 anything, but right around that area.

5 Q. Did you tell them in 2003 that the doors
6 opened at 6:30 a.m.?

7 A. I probably did, yeah.

8 Q. Okay. There we go. And did you tell them
9 at that time that they kept you and the others
10 outside until about 2:00 in the morning? Page 306.

11 A. It wasn't that late, but it was late at
12 night. It wasn't 2:00 in the morning, but it was
13 late at night. I might have made a mistake there,
14 or they might have made a mistake. One of the two.

15 Q. Did you tell them --

16 MS. ARMIJO: Can we please have a Bates
17 first?

18 MR. SINDEL: 308.

19 MS. ARMIJO: And also hearsay.

20 THE COURT: Let me hear the question
21 first. What are you trying to do at this point,
22 Mr. Sindel?

23 MR. SINDEL: At this point -- well, I'll
24 withdraw the question.

25

1 BY MR. SINDEL:

2 Q. Did you tell them at the conclusion of
3 your interview that you wanted help with parole?

4 A. What's that?

5 Q. Did you tell them at the conclusion of the
6 interview on July 22 that you wanted them to talk to
7 Parole Officer John Sanchez?

8 A. Who was "them"?

9 Q. The individuals. I can name them again:
10 The illiterate Mr. Sprunk -- or Sprunk; Lawrence
11 Jaramillo, who got fired; Captain Steve, who doesn't
12 know what he's talking about; Dwayne Santistevan.
13 Did you tell them at the end of that interview that
14 you wanted them to talk to your parole officer?

15 A. That I wanted to talk to my parole
16 officer?

17 Q. You wanted them to talk to your parole
18 officer.

19 A. I told them I had been there, locked up a
20 long time for a parole violation, and that, you
21 know, I deserve that -- that if I could get some
22 kind of help in getting me set up in the street with
23 resources so that I could continue trying to curb my
24 addiction with alcohol.

25 Q. Did you tell them, simple question, that

1 you wanted help getting out on parole?

2 A. Yes, that's what I'm telling you. I told
3 them that.

4 Q. Did you tell them that you wanted to work
5 with law enforcement agencies throughout the state
6 and maybe the FBI so you could be put into a witness
7 program?

8 A. Yes, I did.

9 Q. And did you tell them, you know, that you
10 wanted to be able to get help getting into the
11 witness program?

12 A. Yes, I did.

13 Q. And did you say, "My main priority is for
14 my parole to be reinstated"?

15 A. I don't remember saying my main priority,
16 but I asked --

17 MS. ARMIJO: Objection, misstates his
18 statement.

19 MR. SINDEL: 327.

20 THE COURT: I'll let you deal with it on
21 redirect. Overruled.

22 BY MR. SINDEL:

23 Q. I quote, "My main priority is for my
24 parole to be reinstated"?

25 A. I asked that I be helped, yeah.

1 Q. Is that what you told them?

2 A. Yes, I told them that I wanted to be
3 helped if they could help me.

4 Q. Did you tell them, "I'm willing to work
5 with you guys, now you guys work with me"?

6 A. They didn't want -- they said, "No, we
7 can't promise you nothing."

8 Q. I didn't ask you that, did I? I'm asking
9 what your words were, sir. I'm asking what your
10 words were.

11 A. Oh. The question again?

12 Q. All right. Did you say, "All I'm saying
13 is that I'm willing to work with you guys. Now you
14 guys work with me"?

15 A. I don't remember saying that.

16 Q. Would it refresh your recollection to look
17 at a transcript of the interview that you gave on
18 July 26, 2003, a word-for-word transcript?

19 A. Well, if you want to bring it up here.

20 MR. SINDEL: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. SINDEL:

23 Q. You may need your glasses again. Okay?
24 Or the glasses.

25 A. Where do you want -- yeah, the different

1 things, yeah.

2 Q. You can't talk to yourself. You just have
3 to wait --

4 THE COURT: Why don't you pull that
5 microphone a little closer to him.

6 MR. SINDEL: Stand here?

7 A. Read that and what? Yeah.

8 BY MR. SINDEL:

9 Q. See those words there?

10 A. Yeah.

11 Q. Can you read those words, sir?

12 A. The one right here, my priority, my main
13 priority?

14 Q. Yeah. Can you read that?

15 A. For my parole to be reinstated. I guess I
16 did say it, if it says there.

17 Q. So you did say it; right?

18 A. I probably did, because it's there, yeah,
19 but I didn't know. I mean, I never seen those
20 papers before. No, I never -- the last time I seen
21 them guys was back up there, July 2003, isn't it?

22 Q. Did Maria or Nancy or Bryan or --

23 A. No.

24 Q. -- any of the other people that you talked
25 to talk to you about the statement that you made in

1 July of 2003?

2 A. No.

3 Q. Never brought it up?

4 A. No.

5 Q. Never said a word?

6 A. In 2003?

7 Q. Yeah.

8 A. Which one is that one? The one -- this
9 one?

10 Q. Yes, sir. You never said a word?

11 A. Well, Nancy told me that she was there to
12 take a statement on me, and that these guys were
13 going to try and this and that, and that she wanted
14 me to testify, if I was still willing to testify,
15 no, and I said yes.

16 Q. I'm not asking -- what I'm asking is: Did
17 Nancy, Maria, Randy, Bryan, or any other members of
18 the team of prosecution --

19 A. Yeah.

20 Q. -- ever ask you a thing about your
21 statement on July 25, 2003?

22 A. Well, I don't think I'd be here if they
23 didn't. So they did. They must have asked me.

24 Q. You're not answering my question. Listen
25 to my question.

1 A. Yeah.

2 Q. Did they ask you anything about your
3 statement?

4 A. This statement? All the statements?

5 Q. This statement, sir.

6 A. Oh, this statement. I don't recall this
7 statement. I don't recall this statement. There
8 was a bunch of them that I know that I read.

9 Q. Did they show you this statement?

10 A. These guys showed me --

11 Q. You're going to have to wait.

12 A. Yes.

13 Q. Do you remember how that works?

14 A. Yes.

15 Q. Did they show you this statement or any
16 part of it?

17 A. Yes, but when you say "they," was the
18 Department of Corrections.

19 Q. Okay. I'm sorry. Did Ms. Stemo, Nancy,
20 or Bryan or Randy or Matthew or Maria show you any
21 portion of this statement during the multiple times
22 they talked to you?

23 A. Not on this statement. I never seen this.

24 Q. All right. There, you've answered it.
25 And does it say in here in this statement, "I'm

1 willing to work with you guys. Now you guys work
2 with me"? Does it say that, sir?

3 A. Yeah, it says that.

4 Q. Does that refresh your recollection of
5 what demands you made?

6 A. I didn't make demands.

7 Q. Okay. Does it refresh your recollection
8 as to what you told them?

9 A. What I asked. I was asking.

10 Q. You told them.

11 A. No, I didn't tell them. I asked.

12 Q. You told them --

13 A. I asked.

14 Q. -- "You guys work with me"; right? That's
15 what it says there, isn't it?

16 A. I asked. Yeah, I asked.

17 Q. It doesn't say, "Please, will you guys
18 work with me," does it?

19 A. No, no, but it's -- (Laughs).

20 MR. SINDEL: That's all I have, Your
21 Honor.

22 THE COURT: Thank you, Mr. Sindel.

23 Any other defendant have cross-examination
24 of Mr. Torres?

25 THE COURT: All right. Ms. Armijo, do you

1 have redirect?

2 MS. ARMIJO: Yes. May we approach?

3 THE COURT: You may.

4 (The following proceedings were held at
5 the bench.)

6 MR. SINDEL: That may be surprising that
7 you never went over any of these things. That's
8 kind of a shock. But go ahead. I'm sure you'd
9 correct me if he was wrong.

10 THE COURT: What are you --

11 MR. SINDEL: Nothing.

12 MS. ARMIJO: What are you insinuating?

13 MR. SINDEL: Nothing.

14 THE COURT: Let me hear Ms. Armijo.

15 Ms. Armijo.

16 MS. ARMIJO: All right. The statement
17 first by Mr. Burke, he indicated that it was on
18 53598. We've gone back and looked at the record and
19 the statement that he got out that he asked him
20 about which said DeLeon did not mention Troup was
21 not on that page. It's actually on 43599.

22 THE COURT: Let Ms. Armijo finish.

23 MS. ARMIJO: On the record, it caught me
24 off-guard because there are no statements right
25 there. He blurted out this statement that is right

1 in the middle of all of Mr. DeLeon's statement that
2 they were trying to get in.

3 THE COURT: I'm sorry, who blurted it out?
4 The witness or Mr. Burke?

5 MS. ARMIJO: No, Mr. Burke. And I
6 objected to it and you overruled the objection, the
7 statement that he --

8 THE COURT: What exactly was the question?

9 MS. ARMIJO: He said DeLeon did not
10 mention Troup. And I objected to it and the Court
11 overruled my objection. And as you can see, it's
12 right in the middle of Mr. DeLeon's statements to
13 him.

14 THE COURT: Okay. I guess, though, I'm
15 still not seeing how the question or the answer is
16 objectionable.

17 MS. ARMIJO: Well --

18 MR. BURKE: I will say --

19 THE COURT: Hold on, Mr. Burke.

20 MS. ARMIJO: I think it's objectionable.
21 One, he was misleading the Government where it was;
22 and two, that he's now opened the door to
23 Mr. DeLeon's statements.

24 THE COURT: Okay. Well, I understand what
25 you're saying. I'm not sure that he has opened the

1 door. I still think the question was appropriate
2 and the ruling was correct. I'm not seeing any
3 problem with that.

4 MS. ARMIJO: And the other thing that we
5 will make is that I believe there is certain
6 information --

7 MR. BECK: Yeah, Mr. DeLeon is unavailable
8 under 804(a)(1), (5), absent from the trial or
9 hearing, and the State has not been able by process
10 or other reasonable means to procure his appearance.
11 Mr. DeLeon is out of the country, so he is not
12 within subpoena power of the Court. He is a Mexican
13 national. So he is not available for extradition.
14 There is a provisional arrest warrant in Mexico for
15 Mr. DeLeon that the Mexican Consulate and Mexican
16 Government has not executed and signed.

17 THE COURT: So you know from your
18 investigation that he is not in the United States
19 and therefore not in New Mexico?

20 MR. BECK: Yes.

21 THE COURT: And you know that he is in
22 Mexico?

23 MR. BECK: Yes.

24 THE COURT: Well, it would seem to me that
25 the Government has established that he is

1 unavailable. And I was listening, but tell me again
2 what efforts you made to have him extradited or
3 arrested in Mexico.

4 MR. BECK: There is a provisional arrest
5 warrant. Obviously, the United States agents,
6 United States law enforcement cannot go into Mexico
7 and arrest a Mexican national without approval from
8 the Mexican Government. The approval from the
9 Mexican Government is sitting on the desk -- it has
10 been there since May 2017 -- to arrest Angel DeLeon
11 in Mexico. It has not been executed by the Mexican
12 Government and, therefore, Angel DeLeon has not been
13 arrested in Mexico.

14 THE COURT: Are y'all fairly confident
15 that he's still in Mexico at the present time?

16 MR. BECK: Yes.

17 THE COURT: And the arrest warrant in the
18 United States remains outstanding?

19 MR. BECK: Yes.

20 THE COURT: Well, it seems to me that
21 he --

22 MR. SINDEL: Your Honor, may I just say --

23 THE COURT: You may.

24 MR. SINDEL: If there was information that
25 he is in the United States or has been during the

1 pendency of the prosecution, would that have any
2 impact on the Court's decision?

3 THE COURT: Well, if y'all have it and
4 want to share it, I'd be glad to listen to it.

5 MR. SINDEL: I certainly would have to
6 talk to the rest of the attorneys as to whether or
7 not -- I don't have it. I don't. But there may be
8 some evidence that he is --

9 THE COURT: No, I only have to make a
10 ruling here by a preponderance of the evidence. So
11 whatever anybody wants to present to me, I'm
12 listening. But it seems to me that the Government
13 now has made their showing, and I can find by a
14 preponderance that he's unavailable. But if y'all
15 want to present some other testimony or evidence,
16 I'd be glad to consider it.

17 MR. SINDEL: Can we reserve a final ruling
18 on this until after lunch, and I can talk with
19 co-counsel? I don't want to speak for anyone.

20 THE COURT: Let me ask Ms. Armijo, how
21 long do you think your redirect is going to last?

22 MS. ARMIJO: Very short.

23 THE COURT: Well, why don't you just step
24 over to the other side and discuss it now and see.

25 MR. SINDEL: I don't know, did you want to

1 say something? I know you had that statement about
2 something I said. You brought up the statement. If
3 you're going to do it here, here's the time to do it
4 right now.

5 THE COURT: Do you have anything to say on
6 Mr. Sindel?

7 MR. SINDEL: No, I thought she said I was
8 making insinuations.

9 THE COURT: Well, he was. But do you have
10 anything to say about him?

11 MR. SINDEL: I didn't hear what she said.

12 MS. ARMIJO: I don't do that.

13 MR. CASTLE: May I make a brief argument?
14 When they put out an arrest warrant, that guarantees
15 they're not going to appear. Had they attempted
16 letters interrogatory or attempted to discuss with
17 Mr. DeLeon notice immunity, Kastigar letter,
18 anything of that nature to get him to testify. The
19 issue here is not he's unavailable to be prosecuted.
20 The issue here is he's unavailable to testify. The
21 Government has done everything possible to make sure
22 he doesn't testify. I assume trying to get him
23 arrested, that's in hopes of trying to get him to
24 testify.

25 THE COURT: Well, I guess that the point

1 is he's unavailable to testify. And that's the only
2 thing I have to make a determination of. And the
3 Government's made diligent efforts to try to make
4 sure that he's here, and I just -- I can't think of
5 anything else they could do to get him here.

6 MR. CASTLE: I just think all they've said
7 is they've tried to get the Mexican Government to
8 arrest him. They haven't talked about any efforts
9 they've made to try to get him here to testify. If
10 they'd gone to the Mexican Government and said,
11 "Listen, he won't be arrested; all we want him to do
12 is come here and testify, do letters of
13 interrogatory and get him to testify." That's all
14 they're saying they're doing. They're talking about
15 their efforts to prosecute. So that is a different
16 concept, so it's for the Court's consideration.

17 THE COURT: I understand.

18 MR. SINDEL: The only thing I want to add
19 they did, Mr. Castle is referring to -- I know they
20 tried to secure the testimony and cooperation of
21 Mr. Jaramillo. They gave him immunity and they told
22 him that's what they'll give him in order for him to
23 walk in this court. And apparently, he had said he
24 wouldn't cooperate until they did that, so --

25 MR. BECK: Mr. Jaramillo is not out of the

1 process power and the rule of 804(a)(1). He's not
2 outside the process power of the Court, which is why
3 we did subpoena him and why he did show up and
4 testify. Mr. DeLeon is not within the process
5 power.

6 THE COURT: Why don't you step to the side
7 and see if there is anything else you want to bring
8 before the Court.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: Counsel, y'all are going to
12 have a little meeting over here. Why don't y'all
13 step over here with Mr. Sindel.

14 (The following proceedings were held at
15 the bench.)

16 MR. SINDEL: We would like an opportunity
17 to make some phone calls, or she can go ahead with
18 her redirect.

19 THE COURT: She says it's very short. I
20 think the only thing she's going to ask is this
21 statement.

22 MR. BECK: Right.

23 THE COURT: The statement about DeLeon.

24 MR. SINDEL: We need to make some phone
25 calls. I think the Court indicated -- am I allowed

1 to -- maybe we need to make a phone call in order to
2 verify before we present it to the Court.

3 MR. BECK: I think that the pertinent
4 inquiry is where Mr. DeLeon is now. Mr. DeLeon is
5 in Mexico now. He is a Mexican citizen, he's facing
6 the death penalty, as the only person in the DeLeon
7 case facing the death penalty. So with that, with
8 the arrest warrant --

9 THE COURT: There is no decision made not
10 to seek the death penalty?

11 MR. BECK: Not yet, not to him. He is the
12 only defendant and he has an aggravating factor. He
13 has a sex offense that would be an aggravating
14 factor for the death penalty.

15 THE COURT: Remind me of that.

16 MR. BECK: I don't know.

17 MS. ARMIJO: A decision hasn't been made
18 because the Attorney General ordered the person
19 arrested. Let's say they make a decision now, and
20 he's arrested in the United States after murdering
21 four people. So they do not make a decision until
22 the person has been arrested. If he also has an
23 aggravating factor, I'd have to go --

24 MR. SINDEL: 31992.

25 MS. ARMIJO: Right, there you go. I

1 believe his prior felony conviction is an
2 aggravating factor, so he's got more --

3 THE COURT: So it might be a factor that
4 would cause the Department of Justice to seek it in
5 his case? It wouldn't be particularly relevant in
6 the case itself?

7 MS. ARMIJO: No.

8 THE COURT: It's just a factor in trying
9 to decide?

10 MS. ARMIJO: But right now the original
11 arrest warrant was submitted, I believe, last May,
12 and it's been pending since that time.

13 THE COURT: Well, let me respond to
14 Mr. Castle's point.

15 MR. CASTLE: Can I just add one more fact?

16 THE COURT: Let me address your last one,
17 though. I disagree with that, if he's unavailable
18 because the Government hasn't done certain things.
19 I think he's unavailable under 804(b)(5) because it
20 refers to other reasonable means. It seems like the
21 Government is using some other reasonable means
22 other than just subpoena power and some things that
23 I think in this case would be perfunctory. And it
24 doesn't say "possible means"; it doesn't say "all
25 possible means," so it's a process or other

1 reasonable means. So I think they've laid out how
2 they're trying to get him to -- get him in their
3 power to be present for the trial or hearing or in
4 the United States. Because if he were over at the
5 jail, I think he would be available for trial or
6 hearing by all the parties that are seeking it
7 through the subpoena power.

8 So let's do this: I think I've got to let
9 Ms. Bean take a break and got to let the jury go.
10 So if you want to make some calls. Otherwise,
11 Ms. Armijo can, after lunch, begin her redirect.
12 And without any further information, I'll allow her
13 to get the statement. I would propose this. You
14 don't have to tell me this immediately. But I would
15 propose that she lead the witness so that he doesn't
16 give us all that other stuff he gave. So unless the
17 defendants don't want a leading statement, I propose
18 it be leading. And do you have the exact script?

19 MS. ARMIJO: Yes, Your Honor.

20 THE COURT: It's "that he said -- that he
21 said that he distracted them from everything and
22 then he got his feet and held his feet." And you
23 can lead him on that.

24 If y'all want to object, then I'll make
25 him do it the other way. But I think that's --

1 MR. SINDEL: I'm going to object. This
2 gentleman is a loose cannon.

3 THE COURT: Okay.

4 MR. CASTLE: The last --

5 THE COURT: Let's do it after lunch.

6 MR. CASTLE: Okay.

7 MR. SINDEL: Thank you, Judge.

8 MS. ARMIJO: Okay.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: All right. Let's go check
12 those food trucks out. We'll be in recess for about
13 an hour.

14 (The jury left the courtroom.)

15 THE COURT: All right. See y'all in an
16 hour.

17 MR. SINDEL: Thank you, Judge.

18 THE COURT: Thank you.

19 (The Court stood in recess).

20 THE COURT: All right. I think we've got
21 all the defendants in the courtroom, and we've got
22 lawyers for all the defendants. Anything else from
23 the defendants?

24 MR. SINDEL: Not from Mr. Gallegos.

25 THE COURT: Why don't you line them up?

1 Is there anything else we need to discuss
2 before we bring the jury in? Anything else I can do
3 for you, Ms. Armijo?

4 MS. ARMIJO: Yes, I heard from Louis
5 Lopez. He called the office this morning and
6 indicated that it was his impression, based upon a
7 conversation that he had with defense counsel, that
8 the medical records were a done deal, and that he
9 didn't have a position; and he certainly objects,
10 and indicated that he thought he'd be filing his
11 official objection by -- I would assume by 1:00,
12 because he called I think before, around 11:00 or
13 12:00, saying it would be within the hour.

14 THE COURT: Is he your next witness?

15 MS. ARMIJO: No.

16 THE COURT: No, but he objects to his
17 medical records?

18 MS. ARMIJO: Yes, he does. That's for
19 Frederico Munoz.

20 THE COURT: Oh, okay. All right. Well,
21 let me turn back to that issue. We kind of had an
22 active morning, and so I didn't think about medical
23 records a lot this morning. I thought about food
24 trucks.

25 MS. HARBOUR-VALDEZ: He's in opposition,

1 is what he told us.

2 THE COURT: I know he opposed.

3 MS. ARMIJO: That was for the PSR.

4 THE COURT: That was for the PSR. All
5 right. Defendants have anything?

6 All right. All rise.

7 (The jury entered the courtroom.)

8 THE COURT: Did y'all try the food trucks?
9 I had my snap peas. How is that? The lunch of
10 champions, I guess.

11 All right. Mr. Torres, I'll remind you
12 you're still under oath.

13 Ms. Armijo, if you wish to conduct
14 redirect, you may at this time.

15 REDIRECT EXAMINATION

16 BY MS. ARMIJO:

17 Q. Mr. Torres, did Angel DeLeon -- and this
18 is just a yes or no. Did Angel DeLeon make a
19 statement to you in which he indicated what role he
20 played in the murder? And that's just a yes or no.

21 A. Oh, what was that, again?

22 Q. Did Angel DeLeon, on March 26 of 2001,
23 which would be the day that Frank Castillo was
24 killed -- did he at some point make a statement to
25 you involving his role in the murder?

1 A. Yes, he did.

2 Q. Okay. And in reference to that, did he
3 say to you that he created a distraction and then
4 got Castillo's feet and held his feet?

5 A. Yeah, that's correct.

6 MS. ARMIJO: All right. Thank you. I
7 have no further questions, Your Honor.

8 THE COURT: Thank you, Ms. Armijo.

9 Anyone else? All right, Mr. Torres, you
10 may step down.

11 Is there any reason Mr. Torres cannot be
12 excused from the proceedings? Ms. Armijo?

13 MS. ARMIJO: No, Your Honor.

14 THE COURT: The defendants? Anybody?

15 MR. SINDEL: No, Your Honor.

16 THE COURT: Not hearing any objection, you
17 are excused from the proceedings. Thank you for
18 your testimony.

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2 STATE OF NEW MEXICO

3

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6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 13th day of May, 2018.

13

14

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